

**Part E6: Probity in Licensing – Licensing Protocol**

# **Cotswold District Council**

## **Probity in Licensing Licensing Protocol**

**A guide to procedures and a  
protocol for Councillors and Officers  
involved in making decisions  
on licensing applications and  
other licensing matters**

**(Approved by Council on.... )**

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## CODE OF PRACTICE: PROBITY IN LICENSING

### Introduction

This Policy deals primarily with the responsibilities of the Planning and Licensing Committee and Sub-Committee which deal with Licensing applications. In terms of these Committees, Cotswold District Council operates in an “administrative” way. In essence this requires it to act fairly when determining contentious licensing applications, policy issues and related matters. Most applications are free of objection and are determined under powers delegated to Officers. This Code is written having regard to the Council’s commitment to the principles of good enforcement, particularly openness and consistency.

All references to the Licensing Committee should be interpreted as the licensing part of the Planning and Licensing Committee. This includes any Sub-Committee of the Licensing Committee, as appropriate. All references to the Applicant refer to the Applicant, which includes a person calling for a review of a licence, the Licensee or the Applicant’s or Licensee’s representative, as appropriate.

The Protocol is to be read alongside the Councillors’ and Officers’ Codes of Conduct.

### What does the Licensing Committee do?

For the purposes of this Policy, the Licensing Committee deals with major and contentious applications and most policy and policy guideline issues involving licensing. Applications are also referred for Members’ consideration where they are contentious and/or objections have been lodged by statutory consultees, residents, other third parties or where officers have reservations about the appropriateness of an application or the suitability of an Applicant. Hackney Carriage and Private Hire disciplinary matters are also dealt with by the Licensing Committee in accordance with the provisions of the Council’s Hackney Carriage and Private Hire Policy.

The decisions that the Licensing Committee makes are significant and weighty. The Licensing Committee operates under its extensive delegated powers and it, rather than any other part of the Council, actually makes the decisions. The decisions can have a considerable effect on the value of premises or other capital assets, on the amenities of people living near licensed premises and on the lives of Applicants. Furthermore, if the Licensing Committee makes a wrong or irrational decision, this may mean that the Council will face substantial costs if there is a successful appeal against the decision or if the decision is the subject of a legal challenge from an aggrieved third party.

Some licensing legislation specifies procedures to be followed but, in all cases, human rights and natural justice considerations dictate that the Licensing Committee acts fairly and adheres to the following principles in that decisions **must**:

- Be made on the individual merits of a case.

- Have regard to all relevant national and local guidance.
- Be made impartially and in good faith.
- Be made by the body that receives all the relevant information and evidence.
- Relate to the issue or question placed before the committee.
- Be based only on consideration of relevant and material matters.
- Be proportionate, rational, and reasoned.
- Be made in a way that does not give rise to public suspicion or mistrust.

The purpose of this Code of Practice is to set out in detail how Members should act and the procedures which should be followed to ensure that Members not only act in a fair and proper manner but are also seen to do so.

This Code has been prepared with a particular emphasis on Members who serve on the Council's Licensing Committee, but its content is also relevant to all other Councillors and also to Officers in all other services.

The District Council, along with all other local authorities, has adopted a Code of Conduct which specifies the obligations imposed on Members and defines Disclosable Pecuniary Interests and Other Interests and how these will affect the way a Member behaves. That Code of Conduct, which every Member has signed up to, is the statutory base to which this Code of Practice is added. In some areas this Code of Practice will extend, or go further than, the Code of Conduct. In the case of a conflict between the two, the Code of Conduct will take precedence.

It is possible that breaches of this Code of Practice could be considered to be a breach of the Code of Conduct. This Code of Practice is part of the Council's Constitution and can be viewed on-line at [www.cotswold.gov.uk](http://www.cotswold.gov.uk).

## Part One: Conduct of Councillors and Officers

### A. Voting and Impartiality

- 1. Licensing Committee Members must vote in the best interests of the District as a whole and must not vote on the basis of local ward interests that may be contrary to a balanced licensing assessment in the light of wider policies and guidance.*

The overriding duty of a Committee Member is to the whole community, rather than just the people living in their Ward. This is a fundamental principle of the local democratic system.

- 2. Members of the Licensing Committee must not declare which way they intend to vote in advance of the consideration of an application by the Licensing Committee.*

This can be a difficult issue for Members as they may be exposed to pressure from residents or the media to express a particular viewpoint. However, it is essential that Members are measured and circumspect in the comments they make. If a Member declares which way they intend to vote it would in effect be pre-determining the application without having considered all of the relevant information. This could expose the Council to the possibility of legal challenge or a charge of maladministration. Members must not make their minds up until they have read the relevant Committee reports and heard the evidence and arguments on both sides.

- 3. If a Member of the Licensing Committee declares **OUTRIGHT** support for or opposition to a proposal before the matter has been put before the Licensing Committee, the Member must make an open declaration of their views to the Licensing Committee and take no part in the voting on that particular item.*

It does not mean that Members cannot make a comment or reflect local concerns about a proposal before the Licensing Committee considers it. However, the view or comment must not pre-determine or be seen to pre-determine the way that Member will vote.

Predetermination is a legal concept that the courts have always applied to local authority decision making. It predates the Code of Conduct and is not altered by it. Pre-determination occurs where a Member's mind is closed to the consideration and weighing of relevant factors in the decision making itself.

It is important that Licensing Committee members be open to any new argument at all times up to the moment of decision. A Licensing Committee Member with a pre-determined view on a licensing application is disqualified from participating in the Committee's decision-making on the application.

**4. *Licensing Committee Members who are also members of the County Council or a Town or Parish Council must exercise particular care in reconciling their two roles.***

This rule would apply in the case of a Member(s) holding office in the District Council and also in the County Council and/or a Town or Parish Council. Such Member(s) may find that they are expected to express a view at a County Council or a Town or Parish Council meeting or vote on whether or not the County or the Town or Parish should object or comment on a proposal from a County or a Town or Parish point of view. In such circumstances Members are advised to abstain from both the debate and voting at the County Council or the Town or Parish Council. This is not inconsistency, but the consequence of having to fulfil two totally separate roles. If a Member does declare his or her outright support for or opposition to a licensing proposal at a County or a Town or Parish Meeting or elsewhere they must make an open declaration to the District Council's Licensing Committee to that effect and take no part in the voting and debate on that item, and leave the meeting. In all other cases Councillors on the Licensing Committee who are also members of the County Council and/or a Town or Parish Council may speak and vote at District and County and/or Town or Parish levels if they are genuinely willing to listen to the later debate and weigh the considerations material to the later decision.

**5. *Licensing Committee Members should not organise support for or against a Licensing application and should not lobby other Councillors.***

Committee Members should not place themselves in a position where they may give the impression that they had made up their mind before hearing the evidence. Each Member should make up his or her own mind on the evidence and facts presented to the Licensing Committee (See Section G on lobbying). With regard to other Members, it could give the impression that they were seeking to influence Committee Members (see section G on lobbying).

**6. *Licensing Committee Members must not favour or show bias for or against any particular person, company or group, or any particular site or locality in respect of licensing matters.***

Any correspondence received directly from the above parties should be forwarded to the Licensing Officer. Members should also not put themselves in a position where it might be perceived by an outside observer that they are biased. Members should refrain from accepting invitations to attend the application site, outside the proceedings, from the Applicant, persons in favour or against the application or members of the Parish Council.

**7. *Confidentiality***

It will be unusual for licensing applications or other matters to be treated as confidential items with the exclusion of the press and public, but it may occur.

The grounds why this may occur are set down in the Local Government Act 1972 and the Council's Constitution and are most likely to be in relation to the conduct of legal proceedings, or disclosure of personal details.

Information which is of a confidential nature may also be provided to Members. Members are expected to treat the information as confidential and are referred to the Code of Conduct which indicates that a breach of this confidentiality may be a breach of the Code

of Conduct and result in a complaint to the Monitoring Officer. It could also be treated as a breach of the Data Protection legislation.

## **B. Gifts and hospitality**

- 1. Councillors and Officers must abide by the Council's policy in respect of Gifts and Hospitality as set out in the Code of Conduct for Members and the Officers' Code of Conduct which are part of the Council's Constitution.***

The policy on gifts and hospitality is contained in the Council's Constitution and Members and Officers must be extremely careful in this respect to ensure no question of bias can be raised. The general rule is that no gifts should be accepted, and only modest hospitality connected with the work concerned should be accepted.

## **C. Independence and impartiality of Licensing Officers**

- 1. Members or other Officers within the Council must not instruct Licensing Officers to make or not to make a particular recommendation on a licensing application.***

Licensing Officers are trained to deal with licensing issues and will be aware of Government advice, case law etc, and will put forward a balanced report. Other Officers will provide advice as appropriate.

- 2. Officers must always act impartially and advise the Council of their professional opinion.***

The Council's Licensing Officers must always act impartially and give advice based upon a professional assessment of the individual merits of each case taking in to account all relevant policies, guidance, and other relevant material considerations. If they do not, or even if it appears that they are not, the integrity of the licensing process is severely compromised. Where an appeal has been made against a decision made by the Licensing Committee, Officers will always present the Council's case to the best of their ability.

Any Officer who has an interest in an application, similar to an interest Members would need to declare, must declare it and, if necessary, leave the room whilst Members debate and reach a decision on that matter.

## **D. Declarations of Interest**

- 1. Members must always declare their interests in accordance with the Council's Code of Conduct***

The Code of Conduct is contained in the Council's Constitution and must be read in conjunction with this Code of Practice.

All interests must be disclosed at the start of the meeting or when such interests become apparent, and an agenda item on this is included for every meeting.

Depending on the nature of the interest (Disclosable Pecuniary Interest, or Other Interest), the Member may not be allowed to participate in the discussion or vote on the

matter unless a dispensation has been granted. They must also not seek to improperly influence any decision on that matter.

**NB: Failure to disclose a Disclosable Pecuniary Interest is a criminal offence.**

The test Members should apply is not whether they themselves think they have an interest but whether others, knowing the relevant facts, would think they have.

If a Member has any doubt, advice should be sought from the Monitoring Officer ahead of any meeting. If doubt still remains it is best that an interest be declared. The responsibility for declaring an interest rests solely with the Member and these will be noted in the Committee minutes.

There will, however, be times when it only becomes apparent during the meeting that there is a declarable interest. Then the interest must be declared as soon as the Member becomes aware of it, even if it is during discussions on that particular item.

The Monitoring Officer should be informed of any declarable interests which should also be registered in the Register of Members Interests.

## **E. Involvement of Councillors with Applicants**

***1. Members of the Licensing Committee should not act as agents or submit licensing applications for other parties or voluntary bodies.***

Any close involvement, or even perception of close involvement, can compromise the integrity of the licensing process. A Member acting as a licensing agent could give rise to suspicion that the Member was not impartial or may influence other Members in the decision-making process.

***2. Any Member who is a Licensing advisor or similar agent should not be appointed to the Licensing Committee.***

Where Members need to submit licensing applications on their own behalf, or on behalf of their employer as part of their job, they must declare an interest and take no part in the processing of the application or in the decision-making process. Decisions on any proposals submitted by or relating to premises/land/vehicle(s) etc owned or controlled by serving Members should only be determined by the Licensing Committee. The Licensing Committee alone should determine an application submitted by a Member's employer, irrespective of whether the Member is involved in the application, its preparation or submission.

## **F. Council Licensing Applications**

***1. Proposals to licence the Council's own land or premises must be dealt with in exactly the same way as all other applications, i.e. on their own merits.***

The Council's own proposals, or those of others on Council-owned premises/land, must be dealt with on exactly the same basis as applications submitted by any other Applicant.



Members must not have any regard to any other benefit, financial or otherwise, which may accrue to the Council as a result of any particular decision on a licensing proposal.

## **G. Lobbying of Councillors and Formal Submission of Information**

### ***1. Any lobbying of Members must be dealt with carefully to minimise the perception of influence***

This is a complex area and one that requires special care. Lobbying is an attempt to influence a Member's view in writing or verbally in order to achieve a particular decision by Applicants, agents, objectors, or other Councillors. It is a normal part of the political process, but where Members are making statutory decisions, such as licensing decisions, it can result in decisions being made improperly.

Members should treat lobbying with care and should ensure that "unofficial" views, promises or documents do not unduly influence them. Members should advise lobbyists to present their views in writing to the licensing case officer in order that they can be formally considered in a balanced way at the Licensing Committee meeting. Alternatively, Members may choose to pass on the views and or submissions of lobbyists to the officer but should make clear that they are not giving their own views, as this is a matter for formal consideration by the Licensing Committee.

Licensing decisions must be rational and be made strictly on the basis of the relevant facts, guidance and policies relating to each case. Members must not only act in a way that is fair to all parties but must be seen to do so. In particular, Members must not prejudge proposals before they have read the officer's reports and considered all the evidence.

Lobbying can be particularly problematical if Members are given information or assurances by Applicants that do not form part of their formal application and are, therefore, unenforceable. Problems can also arise if Members are given information by objectors which may be misleading, untrue, or irrelevant. Officers face particular difficulties if they are unaware of submissions by applicants and objectors and are therefore unable to consider them and advise the Licensing Committee about them. This would cause particular problems if the Licensing Committee based a refusal on those matters which officers had not had an opportunity to consider and comment upon. Circulation of unofficial papers at a Licensing Committee meeting also constitutes a form of lobbying.

### ***2. Licensing applications must be determined on the basis of the documents and information that have been formally submitted and where all parties have had a proper opportunity to consider them.***

Only submissions from Applicants, agents, or objectors, which are formally received by Licensing Officers, can properly be taken into account in making a decision. The Licensing Committee could be materially misled if Members or other parties circulate 'unofficial' documents or introduce new information on behalf of an applicant or objector or express what they believe to be an Applicant's intention if this did not form part of the application documents and correspondence. In all circumstances, copies of any letters, documents or correspondence should be given to the licensing officer to consider and comment on. Where fresh information comes to light after a committee report has been finalised and

circulated, it may only be tabled in accordance with any relevant regulations or, if there are none, with the Chair's consent.

## **H. Political Decisions on Licensing Applications**

### ***1. Decisions on licensing applications on the establishment of "party lines" cannot be made in political group meetings prior to a committee meeting.***

The view of the Ombudsman is that '*the use of political whips at group meetings is amounts to maladministration*'. It could also give rise to a legal challenge of any decision by Judicial Review. The Council's Constitution also states that political whips will not apply to the Licensing Committee.

### **1. Application by Councillors, Officers or their relatives or friends**

These applications must be dealt with, and be seen to be dealt with, openly, fairly and without any bias. Accordingly, despite the scheme of delegation to officers to decide certain application, all such applications will be reported to Committee.

## Part Two: The Decision-Making Process

### A. Pre-Application Discussions and Negotiations on Submitted Applications

*1. Councillors should not, themselves, seek to advise Applicants or agents about the likely acceptability of licensing proposals.*

Pre-application discussions should always be undertaken by the Council's Officers to ensure that advice is given professionally, comprehensively and in a way that is clearly removed from the political forum. Licensing Committee Members should advise prospective Applicants to contact the appropriate Officer for advice on both merits and procedures. If Members, whether or not they sit on the Licensing Committee, do give an indication of their initial reaction to a proposal they must make clear that any proposals will need to be formally considered by officers and/or the Licensing Committee. They should also make clear that Officers and/or the Licensing Committee could only make a final decision after a full and formal consideration of the proposal.

Similarly, Members should not normally be involved in negotiations and discussions about submitted applications. There may be exceptional circumstances in respect of major or contentious applications where there may be merit in Member involvement to explain a particular local viewpoint or issue. However, such discussions should take place only where at least one officer is present. The officer(s) will make a written record of any such meetings held and will place a copy on the application/premises file. Such a record will constitute a Background Paper for the purposes of the Access to Information Act and may be inspected by any interested person.

The fact that Committee Member(s) have discussed any such proposal with an Applicant or Objectors must be made clear when the application is before the Licensing Committee for determination. Under no circumstances should Members put pressure on Officers to make, or change, any recommendations on an application.

#### *2. Officers' role in processing licensing applications*

The Council employs professional officers whose job is to deal with the applications received, ensure the necessary publicity requirements are dealt with, negotiate with the Applicant and/or their agents, and then report to the Licensing Committee.

The Officers do have pre-application discussions which will try to assist Applicants to submit applications in accordance with Council policies and to assist with the smooth processing of the application.

The Officers will always put forward their professional view to the Licensing Committee and be available to answer Members' questions.

### B. Reports to Committee

*1. Officers will provide written reports for all matters to be considered by the Licensing Committee (with the exception of matters of urgency) or when the Licensing Committee has requested verbal updates on on-going matters.*

There will be occasions when matters arise after the Committee Papers have been prepared and sent out, but a decision of the Licensing Committee will be required. If possible, a written report will be tabled, or if this is not possible the appropriate Officer will provide a detailed verbal report on the issue, explaining why it is urgent. A summary of the verbal report will appear in the Minutes.

Members are also permitted to raise matters of urgency under the Local Government Act 1972. However, if they do intend to do this the Licensing Officers should be informed prior to the meeting of the nature and content of the matter. Officers will attempt to answer any questions, but depending on the length of notice of the matter of urgency this may not be possible at that meeting.

Any matters of urgency can only be raised with the agreement of the Chair of the Licensing Committee who must give reasons as to why it is considered to be an urgent item.

***2. Officer reports to the Licensing Committee will be accurate and will, subject to statutory requirements, comprehensively cover all relevant: (i) policies, guidance, considerations, and issues; (ii) information about the application/case; and (iii) the views of consultees and objectors.***

***3. In all cases, Applicants/ Licensees will be given the opportunity of providing written material for inclusion in the report. Where they rely upon case law, they will be required to give five working days advance notice of the case(s) in question.***

***4. Each Committee report will be a balanced report.*** In exceptional circumstances where, at the time of circulation of the report, negotiations are still on-going or an essential consultation or other response/information is awaited, Officers will give a clear oral update, and this will be minuted.

The report will be in the name of the Lead Manager or the appropriate Officer.

***5. Members must read and carefully consider the content of the circulated report before the meeting, and they must have regard to its contents in reaching their decisions.***

Written reports have always been a cornerstone of probity in the Council's system for committee determination of licensing matters. In the context of planning malpractice, relevant Government bodies have made it clear that written reports are essential, and the same principles should apply to the Council's licensing functions.

### **C. Sub Committee Hearing**

The Council's Constitution will apply to the conduct of business.

Applicants/Licensees will be invited to attend the Sub Committee and be represented if they so choose, they will be sent a full copy of the report about their application/case.

If they do not attend, the Sub-Committee can decide whether or not to deal with their item in their absence on the basis of the written report and the procedure as set out below.

Members who intend to vote must be present in the meeting room throughout the Licensing Committee's consideration of an item so that they hear all of the evidence and hear/participate in the debate.

### ***Sub Committee – Good Practice***

The Procedure for determining applications at the Sub Committee is set out in the Constitution.

The following good practice rules assist the smooth operation of the Sub-Committee and promote probity:

- i. The meeting will be conducted without any undue formality.
- ii. Members should not report new information that they may have been given Applicants or third parties which has not been submitted to officers for formal consideration and comment).
- iii. Members should seek any necessary clarification from Officers on key issues before the meeting as this enables full replies to be given.
- iv. Members should not introduce any non-licensing matters to the hearing.
- v. Members should not speak at length on items already detailed in the Report.
- vi. Members will be required to provide their reasons for their decision. When retiring they will be joined by the Legal Adviser. The Legal Adviser will provide advice on points of law / procedure and advice on the reasons for making their decision. The Legal Adviser's role is as an adviser and not a decision maker.

### **D. The Sub-Committee's Decisions**

Decisions must be proportionate, reasoned, rational and in accordance with the facts of the case and have regard to the provisions of all relevant policies and guidance.

However, decision making requires assessment and judgement of the weight to be attached to policies and guidance issues which, no matter how current, will never provide an answer for all, or even most, applications. Any decision made by the Sub-Committee which is contrary to the provisions of existing policy or guidance must be clearly justified and recorded.

## **E. Deferrals and Committee Site Visits**

### ***1. Deferrals***

Where Members propose to defer consideration of an application, they must set out clear reasons for doing so and these will be minuted.

A proposal to defer any application must be valid and defensible. Justification for deferring a decision might be to ensure that all the proper consultation procedures have been followed, or to secure amendments without which the application would have to be refused. Political expediency, such as deferring a contentious application until after Elections, is never an acceptable course of action.

### ***2. Site Visits***

Site visits are generally unnecessary and can risk putting the Members and the Licensing Authority at risk of accusation of bias.

In special circumstances where a site visit is required, or proposed, reasons justifying the need for it must be given.

All site inspections whether involving Members individually, or collectively, will be conducted in a strictly fact-finding way and there shall be no on-site debate about the merits of the proposal, or any negotiations, or discussions with the applicant, agents, or other concerned parties.

## **F. Public Attendance at Committee Meetings**

### ***1. Most Licensing applications on the Licensing Committee agenda will be considered in public session.***

Open public debate is a fundamental prerequisite of probity in the Licensing system. However, where exempt information under the Local Government Act 1972 (as amended) is included in a report it will be circulated as a confidential item and, subject to the Applicant's/licensee's right to a public hearing such items will be considered with press and public excluded.

Any member of the public who disrupts the meeting in any way will not be allowed to remain in the room.

### ***2. Great care should be taken by Members mingling or speaking to Applicants or objectors.***

Members of the Licensing Committee should be extremely careful in meeting with, and talking to, Applicants or objectors either before or after the meeting. This could give the impression that Members had either prejudged a particular application, or had supported a particular view without looking at, and taking into account all the facts presented by the Officers.

## **G. The Role of Ward Members**

Members who sit on the Licensing Sub Committee are not permitted to vote on applications within their own ward but may nevertheless address the Sub Committee. A Ward Member's local knowledge may in fact give an additional insight to an application and its implications on the licensing objectives. Ward Members may use their local knowledge to ask relevant questions and clarify facts.

The right of Ward Members to speak at Sub Committee meetings may be constrained by statute. For example, under the Licensing Act 2003 Ward Members may only speak if they have lodged a written relevant representation within the prescribed period of time and/or to represent their constituents. In the absence of any specific rules, Ward Members may be invited to address the Sub Committee at the Chair's discretion.

Ward Members should not become too closely identified with special interest groups and be careful to avoid pressure by Applicants, objectors, or supporters. There may be occasions where Ward Members are invited to attend meetings (for example, a formal meeting called by an Applicant or objector) where it would be prudent for a Member to also invite an Officer to be present.

## **Part Three: Administrative Matters**

### **A. Member Training**

Members who are exercising powers to grant or refuse applications are exercising an administrative function, in an area where there is a large amount of Government advice and law. Members must ensure they are adequately trained before carrying out this task. If a Member does not, or cannot, undertake the appropriate training, they must step down until they have received that training.

Members are also encouraged to research pertinent issues by reference to the Licensing Officer who can arrange access to publications, legislation, policy documents and guidance.

Members will be given regular updates to keep them informed of important changes in legislation, procedures, or practices either orally, at training sessions, or as briefing notes.

### **B. Record Keeping**

Officers will ensure that Licensing application records contain sufficient information so that the reason for the ultimate decision can be understood by anyone who reads a file/record without a detailed knowledge of the application.

### **C. Complaints**

Any complaints received in writing about the way in which a Licensing application or other licensing matter has been dealt with in terms of procedures or fairness will be investigated under the Council's Complaints Procedure. The fact that someone may disagree with the decision reached is not a complaint which will necessitate investigation as such, although officers will endeavour to explain the reasons for the Council's decision in any particular case.

Where a complaint about a Council decision is received, a copy will be forwarded to the Chair of the Committee.

Complaints can also be made to the Local Government Ombudsman regarding administrative maladministration (once the Council's internal complaints procedure has been exhausted); or to the Monitoring Officer regarding alleged breaches of the Code of Conduct.

#### **D. Further Advice**

This Code deals with the main issues of probity and conduct but cannot be expected to cover all eventualities that may arise. If Members are in any doubt about any probity-related issue, they are advised to contact the Monitoring Officer.

(END)