



Havering

LONDON BOROUGH

LICENSING COMMITTEE AGENDA

7.30pm	Tuesday 2 March 2010	Havering Town Hall Main Road, Romford
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Members **10** : Quorum **4**

COUNCILLORS:

Conservative Group

Georgina Galpin (Chairman)
Peter Gardner (V C)
Lynden Thorpe (V C)
Melvin Wallace (V C)
Robert Benham
Pam Light

Residents' Group

John Mylod
Linda Van den Hende

Rainham Residents' Group

Coral Jeffery

Labour Group

Tom Binding

**For information about the meeting please contact: Taiwo Adeoye (01708) 433079
E-mail: taiwo.adeoye@havering.gov.uk**

NOTES ABOUT THE MEETING

1. HEALTH AND SAFETY

The Council is committed to protecting the health and safety of everyone who attends meetings of its Committees.

At the beginning of the meeting, there will be an announcement about what you should do if there is an emergency during its course. **For your own safety and that of others at the meeting, please comply with any instructions given to you about evacuation of the building, or any other safety related matters.**

2. MOBILE COMMUNICATIONS DEVICES

Although mobile phones, pagers and other such devices are an essential part of many people's lives, their use during a meeting can be disruptive and a nuisance. Everyone attending is asked therefore to ensure that any device is switched to silent operation or switched off completely.

3. CONDUCT AT THE MEETING

Although members of the public are welcome to attend meetings of the Committee, they have no right to speak at them. Seating for the public is, however, limited and the Council cannot guarantee that everyone who wants to be present in the meeting room can be accommodated. When it is known in advance that there is likely to be particular public interest in an item the Council will endeavour to provide an overspill room in which, by use of television links, members of the public will be able to see and hear most of the proceedings.

The Chairman of the meeting has discretion, however, to invite members of the public to ask questions or to respond to points raised by Members. Those who wish to do that may find it helpful to advise the Committee Officer before the meeting so that the Chairman is aware that someone wishes to ask a question.

PLEASE REMEMBER THAT THE CHAIRMAN MAY REQUIRE ANYONE WHO ACTS IN A DISRUPTIVE MANNER TO LEAVE THE MEETING AND THAT THE MEETING MAY BE ADJOURNED IF NECESSARY WHILE THAT IS ARRANGED.

If you need to leave the meeting before its end, please remember that others present have the right to listen to the proceedings without disruption. Please leave quietly and do not engage others in conversation until you have left the meeting room.

AGENDA ITEMS

1 CHAIRMAN'S ANNOUNCEMENTS

2 APOLOGIES FOR ABSENCE AND ANNOUNCEMENT OF SUBSTITUTE MEMBERS
(if any) - receive.

3 DECLARATION OF INTERESTS

Members are invited to declare any interests in any of the items on the agenda at this point of the meeting. Members may still declare an interest in an item at any time prior to the consideration of the matter.

4. MINUTES

To approve as a correct record the minutes of the meeting of the Committee held on 12 January 2010, and to authorise the Chairman to sign them.

5. REVIEW OF THE POOL OF CONDITIONS – Reports Attached

Members are invited to review the existing pool of conditions and identify new areas that they would like to cover.

6. LICENSING UPDATE – Report Attached.

Lacors has updated the guidance. The role of elected members in relation to Licensing committee hearings under the Licensing Act 2003 to include the provisions of the Policing and Crime Act 2009.

**Cheryl Coppel
Chief Executive**

**MINUTES OF A MEETING OF THE
LICENSING COMMITTEE
Havering Town Hall
12 January 2010 (7.30pm – 8.20pm)**

**Present:
COUNCILLORS:**

Conservative Group	Georgina Galpin (Chairman), Robert Benham, Peter Gardner, Lynden Thorpe and Melvin Wallace,
Residents' Group	Linda Van den Hende

Apologies were received for the absence of Councillors Tom Binding, Coral Jeffrey, Pam Light and John Mylod

No Member declared an interest in the business before the meeting

The Chairman reminded Members of the action to be taken in an emergency

5. MINUTES

The minutes of the meeting held on 26 November 2009 were agreed as a correct record and signed by the Chairman.

6. MATTERS ARISING FROM CONSIDERATION OF THE MINUTES

Further to minute 2 of the meeting held on 26 November 2009 the Licensing and Health and Safety Divisional Manager provided the following information:

- Sandwell Metropolitan District Council had undertaken 45 reviews in 2008/9, none of which had resulted in the licence being revoked. Further details were provided.
- The London Borough of Greenwich has five saturation zones. The saturation policies were derived from decisions made through the Crime and Disorder Reduction Partnership.
- The cost of lodging an appeal against a Licensing Committee decision was £400.

The Committee discussed the possibility of introducing a Saturation Policy for Havering. They were advised that the introduction of a Saturation Zone covering Romford Town Centre would be counter productive as it would run counter to the Council's Night Time Economy policies and the Beacon award

won for those policies. The possibility of a zone covering Hornchurch would need to be investigated further.

Officers provided advice to members which indicated that any saturation policy would not cover convenience stores and off licenses, just those licensed premises for on sales.

7. HAVERING'S REVISED STATEMENT OF LICENSING PRINCIPLES FOR THE GAMBLING ACT

Section 349 of the Gambling Act 2005 requires all licensing authorities to prepare and publish a statement of the principles that they propose to apply in exercising their functions under the Act during the three year period to which the policy applies.

In exercising their functions under the Gambling Act 2005 licensing authorities must have regard to the licensing objectives as set out in section 1 of the Act. The licensing objectives are:

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime'
- Ensuring that gambling is conducted in a fair and open way; and
- Protecting children and other vulnerable persons from being harmed or exploited by gambling.

The draft statement had been circulated for consultation. All comments were considered and the final version of the Statement of Principles produced, without any substantive changes.

Having considered the report of the Licensing and Health and Safety Divisional Manager the Committee **approved** the Statement of Principles attached as Appendix '2' to the report.

8. ANY OTHER BUSINESS

- The Committee agreed to call a further meeting of the Committee to consider proposals for the review of the current Licensing Policy. They further agreed that the Borough Commander should be invited to attend this meeting.

MEETING	DATE	ITEM
LICENSING COMMITTEE	2 March 2010	5

LICENSING ACT 2003

LONDON BOROUGH OF HAVERING

POOL OF CONDITIONS

FOR USE WITH

PREMISES LICENCES

AND

CLUB PREMISES CERTIFICATES

LICENSING ACT 2003

LONDON BOROUGH OF HAVERING

POOL OF CONDITIONS FOR USE WITH PREMISES LICENCES AND CLUB PREMISES CERTIFICATES

GENERAL

This Pool of Conditions has been produced in conjunction with the other Licensing Authorities and Responsible Authorities in London to ensure, as far as possible, that a consistent approach is taken. The document should be used alongside London Borough of Havering's Licensing Policy Statement and with reference to Guidance issued under section 182 of the Licensing Act 2003 by the Department of Culture, Media and Sport. The published Pool of Conditions will be updated from time to time.

Licensing Objectives

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

Licence Conditions

Each application will be determined on its own merits and conditions from the Pool of Conditions shall not be regarded as standard conditions to be automatically imposed in all cases. The Pool of Conditions is designed to provide a range of possible conditions drawn from experience relating to differing situations and to offer guidance. The pool of Conditions is not a finite list of potential conditions and other conditions may be created to address individual and specific circumstances.

Conditions will only be imposed if necessary to promote the licensing objectives and may be adapted to suit the particular case under consideration. Additional conditions will not be imposed where existing legislation and regulation already effectively promote these objectives.

Conditions will normally be applied to address those matters identified as a result of a risk assessment carried out by the applicant and the submission of an Operating Schedule. In addition, conditions may also be applied following the consideration of Relevant Representations from Responsible Authorities, and / or Interested Parties.

Any decision to add a condition to a licence or certificate will depend upon a range of factors including the nature and style of the venue, the activities being conducted there, the location of the premises, the anticipated clientele of the business involved and the local knowledge of the premises.

Following the pool of conditions is good practice guidance which could be used by applicants to include in operating schedules.

Operating Schedules

Any applicant, in preparing the required Operating Schedule, is at liberty to volunteer any measure, such as those described below, as a step he or she intends to take to promote the licensing objectives.

When incorporated into the licence or certificate as a condition, those measures become enforceable under the law and a breach of such a condition could give rise to prosecution. In order to minimise problems and the necessity for hearings, it would be sensible for applicants to consult with the Responsible Authorities when Operating Schedules are being prepared. This would allow for proper liaison before representations prove necessary.

Legal Requirements

It is unnecessary to impose conditions that mirror legal requirements under other legislation. However, it may be appropriate in particular circumstances to impose conditions that supplement or complement legal requirements, for example by imposing a requirement that facilitates legal compliance.

Consequently, compliance with licensing conditions does not of itself signify compliance with other legal requirements and vice versa.

It should be noted in particular that it is unlawful under the 2003 Act:

- **knowingly to sell or supply or attempt to sell or supply alcohol to a person who is drunk**
- **knowingly to allow disorderly conduct on licensed premises**
- **for the holder of a Premises Licence or a designated premises supervisor knowingly to keep or to allow to be kept on licensed premises any goods that have been imported without payment of duty or which have otherwise been unlawfully imported**
- **to allow the presence of children under 16 who are not accompanied by an adult between midnight and 5am at any premises that are licensed for the sale of alcohol for consumption on the premises, and at any time in premises used exclusively or primarily for the sale and consumption of alcohol**

Conditions enforcing these arrangements are therefore unnecessary.

MANDATORY CONDITIONS

It is a requirement of the 2003 Act that certain mandatory conditions must be included on Premises Licences where the licence authorises the sale of alcohol, authorises the exhibition of films or where there is a condition requiring the use of

security staff.

Section 19 Licensing Act 2003, Mandatory conditions: where the licence authorises the sale of alcohol

- M1 No supply of alcohol may be made under the Premises Licence;
- (a) at a time when there is no Designated Premises Supervisor in respect of the Premises Licence, or
 - (b) at a time when the Designated Premises Supervisor does not hold a Personal Licence or his Personal Licence is suspended.
- M2 Every supply of alcohol under the Premises Licence must be made or authorised by a person who holds a Personal Licence.

Section 20 Licensing Act 2003, Mandatory condition: exhibition of films

- M3 Where a programme includes a film in the 12A, 15 or 18 category no person appearing to be under the age of 12 (and unaccompanied in that case), 15 or 18 as appropriate shall be admitted to any part of the programme; and the licence holder shall display in a conspicuous position a notice in the following terms –

PERSONS UNDER THE AGE OF [INSERT APPROPRIATE AGE] CANNOT BE ADMITTED TO ANY PART OF THE PROGRAMME.

Where films of different categories form part of the same programme, the notice shall refer to the oldest age restriction.

This condition does not apply to members of staff under the relevant age while on duty provided that the prior written consent of the person's parents or legal guardian has first been obtained.

Section 21 Licensing Act 2003, Mandatory condition: door supervision

- M4 A minimum of [number] Door Supervisors, all individually registered with the Security Industry Authority, shall be on the premises [*at all times*] [between [hh:mm] and [hh:mm] on [days] when] the premises are open for any licensable activity.

CONDITIONS RELATING TO CRIME AND DISORDER

General

Advice should be sought from the police prior to application. The police may wish conditions from the pool of conditions to be applied to a licence issued to a premise or that the wording be varied from that published in the general pool of conditions to fit the individual requirements of that premise.

Applicants may wish to include conditions in their Operating Schedule to satisfy each of the four licensing objectives. Applicants should include conditions, which are appropriate to the size of the premises and relevant to the location of the premises and type of licensable activity carried out. Applicants should expand on how they will implement each of the conditions. Where conditions require the written approval of Havering Police, unless otherwise stated, this should be sought from Havering Police, The Licensing Office, Romford Police Station, 19 Main Road, Romford, Essex RM1 3BJ.

Some measures may also be relevant to promote the other licensing objectives.

- CD1 All staff shall be suitably trained for their job function for the premise. The training shall be written into a programme, ongoing and under constant review, and must be available to a relevant Responsible Authority when called upon.
- CD2 All Personal Licence Holders supervising the sale of alcohol shall hold a nationally recognised licensing qualification.
- CD3 The Licence Holder shall implement a written Children's Policy which must be approved in writing with the Police or Havering's Children and family services. It should include. 'Where the sale of alcohol is a licensed activity no persons under 18 shall be admitted to, or allowed to remain on the premises between 21:00hrs and 06:00hrs', unless specifically covered in the Children's Policy.
- CD4 No person shall be admitted to the premises less than one hour before cessation of the last licensable activity.
- CD5 Persons shall be prevented from leaving the premises with alcohol supplied in open containers.
- CD6 A Premises Daily Register shall be kept at the premise. This register will be maintained and kept for a minimum of 12 months. This register should record the name of the person responsible for the premise on each given day. The Premises Daily Register shall record all calls made to the premises where there is a complaint made by a resident or neighbour of noise, nuisance or anti social behaviour by persons attending or leaving the premises. This shall record the details of the caller, the time and date of the call and the time and date of the incident about which the call is made and any actions taken to deal with the call. The Premises Daily Register will be readily available for inspection by an Authorised Person throughout the trading hours of the premise. The Premises Daily Register will also record all incidents in relation to the use of any force by staff or Door Supervisors in the removal of persons from the premises. It shall record the time and date of the occurrence, name or brief description of the person removed, and details of the staff involved.

- CD7 All Door Supervisors shall enter their full details in the Premises Daily Register at the commencement of work. This shall record their full name, home address and contact telephone number, the Door Supervisor's SIA registration number and the time they commenced and concluded working. If the Door Supervisor was supplied by an agency, details of that agency will also be recorded including the name of the agency, the registered business address and a contact telephone number.
- CD8 On the (x) number of occasions that you make use of additional hours on your licence to cover special occasions, Havering Police shall be given no less than ten working days written notification of the special occasion or event. This shall give details of;
- The name of the premises and the name of the Designated Premises Supervisor for the duration of the event.
 - The nature of the event and brief details of how the event will be run.
 - The date, the commencement and conclusion time of the event.
 - Expected numbers attending.

Bottle and glasses

Glass bottles may be used as weapons inflicting more serious harm during incidents of disorder. Subject to a risk assessment a condition may be imposed to prevent sales of drinks in glass bottles for consumption on the premises.

Glasses containing drinks may be used as weapons during incidents of disorder and in un-toughened form, can cause very serious injuries. Therefore, in appropriate cases consideration will be given to conditions requiring either the use of plastic containers or toughened glass, which inflict less severe injuries. Location and style of the venue and the activities carried on there will be particularly important in assessing whether the imposition of such a condition is necessary. For example, the use of glass containers on the terraces of some outdoor sports grounds may obviously be of concern, and similar concerns may apply to indoor sports events such as boxing matches. Similarly, the use of such plastic containers or toughened glass during the televising of live sporting events, such as international football matches, when high states of excitement and emotion fuelled by alcohol might arise, may be a necessary condition

- CD9 Drinks shall be served in non-glassware drinking vessels (e.g. plastic, polystyrene, waxed paper)

Note. Weights and measures legislation requires the use of "stamped glasses" where "meter-measuring equipment" is not in use.

CD10 Drinks shall be served in containers made from toughened glass (tempered glassware).

Note. Weights and measures legislation requires the use of “stamped glasses” where “meter-measuring equipment” is not in use.

Open containers not to be taken from the premises

Drinks purchased in licensed premises or clubs could be taken from those premises for consumption elsewhere. Where premises are licensed for the sale of alcohol for consumption off the premises that would be entirely lawful. However, consideration will be given to a condition preventing the taking of alcoholic and other drinks from the premises in open containers (e.g. glasses and opened bottles) to prevent these containers being used as offensive weapons after individuals have left the premises. Such a measure may also be relevant to promote public safety.

CD11 No person shall be allowed to leave the premises whilst in the possession of any drinking vessel or open glass bottle, whether empty or containing any beverage.

Capacity limits

Although most commonly made a condition of a licence on public safety grounds, consideration will also be given to conditions which set capacity limits for licensed premises or clubs where it may be necessary to prevent overcrowding which can lead to disorder and violence. Where such a condition is considered necessary, consideration will also be given as to whether Door Supervisors will be needed to ensure that numbers are appropriately controlled and monitored.

Such considerations will be particularly relevant at High Volume Vertical Drinking establishments (HVVDs) which are premises with exceptionally high capacities, used primarily or exclusively for the sale and consumption of alcohol, and have little or no seating for patrons. At such premises it may also be appropriate to consider the ratio of chairs and tables to customers.

Where there is an agreed maximum capacity, this figure shall include all staff and entertainers. The capacity may be set for each part of the premises where appropriate. The figure may detail seating capacity and vertical capacity. Where there is a change of use of the premises throughout the trading day the figure should show the change of capacity and the times where relevant.

CD12 The maximum number of persons (including staff and entertainers) allowed at the premises shall not exceed [*number*].

CD13 The maximum number of persons (including staff and entertainers) allowed at the premises shall not exceed [*number*], subject to the following maximum occupancies:

For example.

[Ground Floor] [number] persons

[Basement] [number] persons

CD14 Seating for no less than [number] persons shall be provided in the premises at all times the premises are in operation.

Note: *This is not a standalone condition.*

CCTV

The presence of a properly specified and fully operational CCTV system can make an important contribution towards public safety and the prevention of crime. It will also assist in the investigation and identification of those involved should an incident occur immediately outside or inside licensed premises. Conditions may not just require CCTV on the premises, but also specify the precise location of each camera, the requirement to maintain all equipment in working order, retain a System File and to secure recordings for an appropriate period of time.

An 'Operational Requirement' (OR) should be drawn up for each CCTV system to ensure that it is fit for purpose. Advice on how to complete an 'OR' can be found in the Home office Scientific Development Branch (HOSDB) publication 55/06 'CCTV Operational Requirements Manual'. The Havering Police Crime Prevention Office will provide individuals conducting risk assessments when preparing operating schedules with advice relevant to current standards. At the time of publication these are provided for in the HOSDB publication 09/05 'UK Police Requirements for Digital CCTV Systems.

CD15 - A properly specified and fully operational CCTV system shall be installed or the existing system maintained to a satisfactory standard. The system will incorporate a camera covering each of the entrance doors and be capable of providing an image which is regarded as 'identification standard' of all persons entering and/or leaving the premises. All other areas of risk identified in the Operational Requirement shall have coverage appropriate to the risk.

CD16 The installation or upgrading of any CCTV system shall comply with current best practice. In addition the documentation listed below shall be included in a 'System File' which should be readily available for inspection by the relevant authority;

Site plan showing position of cameras and their field of view.

Code of Practice.

Performance specification e.g. storage capacity, image file size, IPS for each camera and purpose of each camera position

Operational requirement.

Incident log.

Maintenance records including weekly visual checks.

CD17 To obtain a clear head and shoulders image of every person entering the premises on the CCTV system, persons entering the premises should be asked to remove headwear, unless worn as part of religious observance.

CD18 The CCTV system shall incorporate a recording facility and all recordings shall be securely stored for a minimum of one calendar month. A system shall be in place to maintain the quality of the recorded image and a complete audit trail maintained. The system will comply with other essential legislation, and all signs as required will be clearly displayed. The system will be maintained and fully operational throughout the hours that the premises are open for any licensable activity. For premises using a video recording system, the cassette tapes shall be used on no more than 12 occasions to maintain the quality of the recorded image.

CD19 The positions of all CCTV cameras shall be clearly shown on a set of plans which should form part of the 'System File'. Any alteration to the system should only be carried out after consultation with and written approval of Havering Police and the Licensing Authority.

Misuse of drugs

London Borough of Havering is committed to addressing the problem of the misuse of drugs at all licensed premises but in particular at music and dance venues and supports the "Safer Clubbing" strategy which can be viewed at <http://www.drugs.gov.uk>.

The role of club owners, managers and event promoters is to ensure that all aspects of their venue are designed and run in ways which maximise the safety of customers, performers and staff.

CD20 The Licence Holder shall implement a written Drugs Policy. This shall detail the strategies to minimise the use and supply of illegal drugs within the premises. The Drugs Policy shall include a structured training programme covering the issues relevant to the misuse of drugs in relation to licensed premises, which will be delivered to all staff. This Policy shall be approved in writing by Havering Police.

CD21 The Designated Premises Supervisor shall hold a National Certificate of Drugs Awareness qualification, run by the BII or similar accredited body.

CD22 All staff shall be trained in dealing with persons who are incapacitated through the use of drugs or the combined effect of drugs and alcohol.

Erotic Dancing etc

Erotic Dancing is defined as any type of dancing that arouses or intends to arouse sexual desire or sexual pleasure and specifically includes "striptease, lap dancing, table-side dancing, pole dancing" and similar entertainment. The nature of this type of activity is such that the following considerations may have a particular significance. All references to striptease shall be deemed to include all forms of striptease or nudity, including the wearing of 'see through' clothing and sexual stimulation.

CD23 The premises shall not be used for striptease or entertainment of a like kind, which involves nudity, or the sexual stimulation of patrons.

This Condition does not apply to any entertainment that is an integral part of a licensed performance of a play.

CD24 The approved activities shall take place only in the areas designated by the Licensing Authority and the approved access to the dressing room(s) shall be maintained whilst striptease or entertainment of a like kind is taking place and immediately thereafter.

CD25 [*Striptease, lap dancing pole-dancing or table-side dancing*] shall be permitted at the premises between the hours of [hh.mm] and [hh.mm] on [day(s)].

CD26 No displays shall be permitted, outside or in the vicinity of the premises, of any descriptions, photographs or other images that indicates that [*striptease, lap dancing, pole-dancing or table-side dancing*] takes place on the premises.

CD27 No audience participation shall be permitted

CD28 Whilst [*striptease, lap dancing, pole-dancing or table-side dancing*] takes place no person under the age of 18 shall be on the licensed premises and a clear notice shall be displayed at the entrance to the premises in a prominent position so it can be easily read by persons entering the premises in the following terms:

“NO PERSON UNDER 18 WILL BE ADMITTED”

CD29 Performers shall be aged not less than 18.

CD30 Arrangements shall be put in place to restrict access to the dressing room at all times when the [*striptease, lap dancing, pole-dancing and/or table-side dancing*] is taking place, and until such time as all performers have vacated it.

CD31 There shall be no physical contact between customers and the dancers except for the placing of money or tokens in a garter or into the hands of the dancer at the beginning or conclusion of a performance.

CD32 There shall be no physical contact between dancers whilst performing.

- CD33 A CCTV system shall be installed to cover all areas where [*striptease, lap dancing, pole-dancing and/or table-side dancing*] will take place in addition to the front entrance and [location]. All cameras shall continually record whilst the premises are open to the public and video recordings shall be kept available for a minimum of one calendar month with date and time stamping.
- CD34 Recordings shall be made available to an Authorised Person of the Licensing Authority or Havering Police together with facilities for viewing.
- CD35 The recordings for the proceeding two events shall be made available immediately on request, and recordings outside this period shall be made available within 24 hours.
- CD36 Whilst [*striptease, lap dancing, pole-dancing and/or table-side dancing*] takes place not less than [*number*] registered Door Supervisors shall be on duty on the premises.
- CD37 The performance of [*striptease, lap dancing, pole-dancing and/or table-side dancing*] within the premises shall not be visible from the street outside at any time.
- CD39 Whilst dancers are performing there shall be a minimum distance of one metre between the dancer and the seated customers and prominent, clear notices shall be displayed at each table stating this requirement.
- CD40 At all times during the performance, performers shall have direct access to a dressing room without passing through or in close proximity to the audience.

Promotions or Major events

The majority of venues have regular repeat artistes and DJs. Only one risk assessment and subsequent debrief is required for an artiste at the venue concerned. Where venues have promotions with different artistes or DJs on each occasion, it is anticipated that the risk assessment forms will be completed for each of these occasions

This definition relates to 'events' that require a Promotion / Event Risk Assessment Form 696.

An event will be deemed to be: any occasion in a licensed premises, or other venue under a Temporary Event Notice, where there will be a live performer/s – meaning musicians, DJs, MCs or other artiste; that is promoted in some form by either the venue or an outside promoter; where entry is either free, by invitation, pay on the door or by ticket.

CD 41 The licensee shall undertake a risk assessment of any promotion or event (as defined below) using the MPS Promotion/Event Risk Assessment (Form 696) or an equivalent and provide a copy* to the Metropolitan Police Service and the licensing authority not less than 14 days before the event is due to take place.

CD42 Where an 'event' has taken place, the licensee shall complete an MPS After Promotion/Event Debrief Risk Assessment (Form 696A) and submit this* to the Metropolitan Police and the Licensing Authority, within 3 days of the conclusion of the event.

*submission of electronic documents by e-mail is preferred.

CONDITIONS RELATING TO PUBLIC SAFETY (Including Fire Safety)

General

Advice should be sought from the relevant Responsible Authorities prior to application. The Responsible Authority may wish conditions from the pool of conditions to be applied to a licence issued to a premise or that the wording may be varied from that published in the general pool of conditions to fit the individual requirements of that premise.

Applicants may wish to include conditions in their Operating Schedule to satisfy each of the four licensing objectives. Applicants should include conditions, which are appropriate to the size of the premises and relevant to the location of the premises and type of licensable activity carried out. Applicants should expand on how they will implement each of the conditions. Special issues may arise in connection with outdoor and large-scale events.

Those who prepare Operating Schedules are advised that account will be taken of published standards and guidance relating to safety at public events and venues.

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests and where relevant matters have been identified in Operating Schedules, or as a result of representations being made, consideration will also be given to applying conditions.

Disabled people

PS1 The Designated Premises Supervisor/Duty Manager shall ensure that, whenever disabled people are present, adequate arrangements are made to enable their safe evacuation in the event of an emergency and that the disabled persons are made aware of these arrangements.

Note: Licensees are advised to obtain details of and seek to address any special needs when approached by organisers of parties of disabled people.

Escape routes

PS2 All exit doors shall be available and easily openable without the use of a key, card, code or similar means.

Note: Doors that are not in regular use should be opened in order to ensure they function satisfactorily before the admission of the public on every occasion.

PS3 Any removable security fastenings shall be removed from the doors prior to opening the premises to the public.

PS4 Exit doors shall be secured in the fully open position when the public are present.

PS5 All fire doors shall be self-closing and shall not be held open other than by devices approved by the Fire Officer.

PS6 Fire-resisting doors to ducts, service shafts and cupboards shall be kept locked shut.

PS7 The edges of the treads of steps and stairways shall be conspicuously displayed.

Fire Log-book

PS8 A Fire Log-book shall be kept at the premise. This Fire Log-book will be maintained and kept for a minimum of 12 months. Full details of the following shall be recorded in the Fire Log-book where appropriate:

- a) staff training and refresher training in respect of fire precautions and fire evacuation training
- b) details of safety checks
- c) details of fire alarm test
- d) details of fire drills
- e) details of testing of smoke ventilators
- f) details of the maintenance and inspection of all fire-fighting equipment and the fire alarm warning system
- g) the name and position of the person making the entry

Safety checks

PS9 All necessary safety checks have been carried out before the admission of the public. Details of the checks shall be entered in the Fire log-book; this may be by use of a separate check list.

Curtains, hangings, decorations and upholstery

- PS10 Hangings, curtains, and temporary decorations shall be maintained flame-retarded.
- PS11 Any scenery shall be maintained flame-retarded.
- PS12 Temporary decorations shall not be provided except with consent from the Licensing Authority. When seeking consent for temporary decorations the Licensing Authority shall be advised of the period for which it is desired to retain them.
- PS13 Curtains, hangings and temporary decorations shall be arranged so as not to obstruct exits, fire safety signs or fire-fighting equipment.

Accommodation limits

- PS14 The maximum number of persons (including staff and entertainers) allowed at the premises shall not exceed [number], subject to the following maximum occupancies:
[Ground Floor] [number] persons
[Basement] [number] persons
- PS15 The maximum number of persons (including staff and entertainers) allowed at the premises shall not exceed [number] ([number] low density use).
- PS16 The premises shall be provided with adequate facilities to monitor and control the number of persons present at the premises. The number of persons (including staff and performers) on the premises during any licensable activity shall be provided to any Authorised Person immediately on request.

Fire action notices

- PS17 Notices detailing the actions to be taken by staff in the event of fire or other emergencies, including how the fire service can be summoned, shall be prominently displayed and shall be protected from damage or deterioration.

Outbreaks of fire

- PS18 The fire service shall be called at once to any outbreak or suspected outbreak of fire, however slight, and the details recorded in the Fire Log-book.

Loss of water

- PS19 The telephone number of the local Fire Control Centre shall be readily available at the premises.

PS20 The Designated Premises Supervisor/Duty Manager shall notify the local Fire Control Centre as soon as possible if he/she is aware that the water supply to any hydrant, hose reel, sprinkler, drencher or other fire extinguishing installation is cut off or restricted.

Access for emergency vehicles

PS21 Access for emergency vehicles shall be kept clear and free from obstruction at all times.

First aid

PS22 An adequate and appropriate supply of first aid equipment and materials shall be available on the premises.

PS23 At least one trained first-aider shall be on duty when the public are present.

PS24 Notices detailing the availability of first aid equipment shall be prominently displayed and shall be protected from damage or deterioration.

Lighting

PS25 Management lighting

(a) In the absence of adequate daylight the management of lighting in any area accessible to the public shall be fully in operation whilst the public are present.

(b) Except as permitted under (d) below there shall be adequate illumination to enable people to see their way in and out of the premises.

(c) Fire safety signs shall be adequately illuminated except as permitted under (d) below.

(d) If essential to the entertainment and subject to the written consent of the Licensing Authority, the management lighting in the entertainment area may be reduced or extinguished provided:

(i) the lighting be controlled from a position with a clear view of the entertainment area; and

(ii) an operator remains by the controls whilst the lighting is reduced or extinguished; and

(iii) the operator restores the management lighting at once in the event of any emergency; and

(iv) the escape route signs remain adequately illuminated.

PS26 Emergency lighting

- (a) The emergency lighting installation shall not be altered in any way except with the written consent of the Licensing Authority.
- (b) The emergency lighting battery shall be fully charged before the admission of the public.
- (c) In the event of failure of the normal lighting the public shall be evacuated from the premises:
 - (i) if the emergency lighting battery has a one hour capacity the public shall leave the premises within 20 minutes unless within that time the normal lighting has been restored and the battery is being re-charged; or
 - (ii) if the emergency lighting battery has a 3 hour capacity the public shall leave the premises within one hour unless within that time the normal lighting has been restored and the battery is being re-charged.
- (d) The public shall not be re-admitted to the premises until the normal lighting has been fully restored and the battery fully recharged except
 - (i) where the emergency lighting battery has a one hour capacity and if the failure of the normal lighting was fully rectified within 20 minutes of failure and the battery is being re-charged; or
 - (ii) where the emergency lighting battery has a 3 hour capacity and if the failure of the normal lighting was fully rectified within one hour of failure and the battery is being re-charged.

Temporary electrical installations

- PS27 (a) Temporary electrical wiring and distribution systems shall not be provided without notification being given to the Licensing Authority at least 10 days before the commencement of the work.

Note: This Condition does not normally apply to electrical equipment on a stage provided with permanently installed distribution facilities.

- (b) Temporary electrical wiring and distribution systems shall comply with recommendations of BS 7671 or where applicable BS 7909.
- (c) Temporary electrical wiring and distribution systems shall be inspected and certified by a competent person before they are put into use. A copy of the certificate shall be sent to the Council as soon as possible.
- (d) Temporary electrical wiring and distribution systems shall be provided only for a period of up to 3 months. This period may be extended subject to a satisfactory electrical test and inspection report being submitted to the Licensing Authority at the end of each 3 month period.

Indoor Sports Entertainments

PS28 At least 10 days' notice in writing shall be given to the Licensing Authority of any proposal to use the premises for any sports entertainment.

PS29 Reasonable and practicable steps shall be taken to minimise any risk to spectators, participants or staff from any equipment used in the entertainment.

PS30 An appropriately qualified medical practitioner(s) shall be present throughout the sports entertainment.

PS31 A registered medical practitioner or a registered paramedic shall be present at any sports entertainment involving boxing, wrestling, judo, karate or other sports entertainment of a similar nature.

PS32 Dressing room accommodation and washing facilities for participants shall be provided to the satisfaction of the Licensing Authority.

PS33 The ring shall be sited, constructed and supported to the satisfaction of the Licensing Authority. Any material used to form a skirt around the ring shall be flame-retarded to the satisfaction of the Licensing Authority.

PS34 At wrestling or other entertainments of a similar nature members of the public shall not occupy any seat within 2.5m of the ring.

PS35 Staff adequately trained in rescue and life safety procedures shall be stationed and remain within the vicinity of the water at all material times. The Licensing Authority shall approve the number of such staff.

Note: The Licensing Authority will normally accept the number of such staff as recommended in Managing Health and Safety in Swimming Pools issued jointly by the Health and Safety Commission and Sport England.

Special Effects

Special effects include dry ice machines and cryogenic fog, smoke machines and fog generators, pyrotechnics, including fireworks, real flame, firearms, motor vehicles, strobe lighting, lasers, explosives and highly flammable substances.

PS36 The use of special effects is not permitted without the written consent of the Licensing Authority.

PS37 The Licensing Authority shall be given at least 10 working days' notice in writing of any proposal to use special effects. The notice shall include, save in exceptional circumstances, exact details of the proposal including the date and time when the special effects can be demonstrated.

PS38 No explosives or highly flammable substances shall be brought onto the premises except with the written consent of the Licensing Authority.

ADDITIONAL CONDITIONS RELATING TO PUBLIC SAFETY FOR THEATRES, CINEMAS, CONCERT HALLS AND SIMILAR PLACES

Premises used for Closely Seated Audiences

PS39 The premises shall not be used for a closely-seated audience, except in accordance with the approved seating plan(s), a copy of which shall be kept available at the premises and shall be shown to any Authorised Person on request.

PS40 All seats shall be fixed and installed.

PS41 A copy of any certificate relating to the design, construction and loading of any temporary seating shall be kept available at the premises and shall be shown to any Authorised Person on request.

PS42 Unless the Licensing Authority requires or approves otherwise the number of attendants on each floor or tier in a closely-seated auditorium shall be as set out on the table below.

Number of members of public present on a floor or tier	Minimum number of attendants required to be present on that floor or tier
1-100	One
101-250	Two
251-500	Three
501-750	Four

751-1000	Five
And one additional attendant for each additional 250 persons (or part thereof).	

- PS43 Any attendant shall be readily identifiable to members of the public
- PS44 Attendants must be available at all times to ensure the prompt discharge of their duties in the event of any emergency.
- PS45 No article shall be attached to the back of any seat which would reduce the clear width between seats or cause a tripping hazard or obstruction.
- PS46 Sitting on floors shall not be permitted.
- PS47 Waiting and standing shall not be permitted in [*parts of the premises*].
- PS48 In no circumstances shall anyone be permitted to –
- (i) sit in any gangway; or
 - (ii) stand or sit in front of any exit; or
 - (iii) stand or sit on any staircase including any landings.
- PS49 Clothing or other objects shall not be placed over balcony rails or upon balcony fronts.
- PS50 No drinks shall be sold to or be consumed by persons in a closely-seated audience except in non-glassware containers (e.g. plastic, polystyrene or waxed-paper).
- PS51 All scenery shall be maintained flame-retarded to the LFEPA's satisfaction.
- Note: Where non-durably flame-retarded fabrics have been approved, these shall be tested for flame-retardancy at intervals as required and be re-treated as necessary.
- PS52 Where a safety curtain is provided, it shall be arranged so as protect the audience from the effects of a fire or smoke on stage for sufficient time to enable the safe evacuation of the auditorium

Premises used for Film Exhibitions

- PS53 Where the premises are not equipped with a staff alerting system the number of attendants present shall be as set out in the table below.

Number of members of the public present on the premises	Minimum number of attendants required to be on duty
1 to 250	Two

and one additional attendant for each additional 250 members of the public present (or part thereof)	
Where there are more than 150 members of the public present in any auditorium or on any floor or tier	At least one attendant shall be present in any auditorium or on any floor or tier

PS54 Where the premises are equipped with a staff alerting system the number of attendants present shall be as set out in the table below.

Number of members of the public present on the premises	Minimum number of attendants required to be on duty	Minimum number of other staff on the premises who are available to assist in the event of an emergency
1 to 500	Two	One
501 to 1000	Three	Two
1001 to 1500	Four	Four
1501 or more	Five plus one for every 500 (or part thereof) persons over 2000 on the premises	Five plus one for every 500 (or part thereof) persons over 2000 on the premises

PS55 Attendants shall as far as is reasonably practicable be evenly distributed throughout all parts of the premises to which the public have access and keep under observation all parts of the premises to which the public have access.

PS56 Staff shall not be considered as being available to assist in the event of an emergency if they are:

- (i) the Licence Holder or Duty Manager; or
- (ii) a member of staff whose normal duties or responsibilities are likely to significantly affect or delay his response in an emergency situation; or
- (iii) a member of staff whose usual location when on duty is more than 60 metres from the location to which he is required to if alerted to an emergency situation.

PS57 The staff alerting system shall be maintained in working order.

PS58 The level of management lighting in the auditorium shall be to the standards specified in BS CP 1007: Maintained Lighting for Cinemas.

CONDITIONS RELATING TO THE PREVENTION OF PUBLIC NUISANCE

General

Advice should be sought from the relevant Responsible Authorities prior to application. The Responsible Authority may wish conditions from the pool of conditions to be applied to a licence issued to a premise or that the wording be varied from that published in the general pool of conditions to fit the individual requirements of that premise.

Applicants may wish to include conditions in their Operating Schedule to satisfy each of the four licensing objectives. Applicants should include conditions, which are appropriate to the size of the premises and relevant to the location of the premises and type of licensable activity carried out. Applicants should expand on how they will implement each of the conditions.

Noise and Vibration

In certain premises a noise impact assessment of the licensable activities at the premises should be carried out to the satisfaction of the licensing authority. Proposed steps to prevent noise must, if necessary, also be submitted for inclusion within the operating schedule.

- PN1 No nuisance shall be caused by noise emanating from the premises or by vibration transmitted through the structure of the premises.
- PN2 The premises shall be arranged to minimise the risk of noise nuisance to nearby properties.
- PN3 Noise emanating from the premises as a result of regulated entertainment shall not exceed the following noise levels expressed as [*x minute Leq*] at [*stated location*];

Frequency Range	From a hours to b hours	From y hours to z hours
[<i>Whole range</i>]	<i>x dBA</i>	<i>y dBA</i>
[<i>63Hz octave band</i>]	<i>x dB</i>	<i>y dB</i>
[<i>125 Hz octave</i>]	<i>x dB</i>	<i>y dB</i>

<i>band]</i>		
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- PN4 Noise emanating from the premises as a result of regulated entertainment shall not exceed [*x dBA*] as measured 1 metre from any residential dwelling.
- PN5 Noise emanating from the premises as a result of regulated entertainment shall be inaudible when monitored at the position delineated in red on the plan annexed to the licence.
- PN6 A noise limiting device shall be installed, fitted and maintained in such a manner as to control all sources of amplified music or speech at the premises.
- PN7 The noise limiter(s) shall be set so as to maintain the maximum level as follows at all times when regulated entertainment takes place:
[Location] x dB(A)
[Location] y dB(A)
- PN8 No [Regulated Entertainment] shall take place until a scheme of soundproofing the [relevant parts] of the premises has been submitted to and approved by the Licensing Authority. The work must be completed to the Licensing Authority's satisfaction prior to any [Regulated Entertainment] taking place.
- PN9 A [*sound trap lobby / acoustic door / automatic door closer*] shall be installed to [*describe the location*].
- PN10 [*Openings / specify*] in the external fabric of the premises must be acoustically sealed to the satisfaction of the Licensing Authority.
- PN11 All [external doors / windows] must be kept closed, other than for access and egress, in all rooms when events involving amplified music or speech are taking place.
- PN12 An alarm shall be fitted to [all external windows / fire doors] which alerts staff when [they / it] are opened without authorisation.
- PN13 A circuit cut off device shall be fitted to the [door] which automatically switches off the sound system when the door is opened. This device shall be tested each day prior to entertainment commencing.
- PN14 No music or speech shall be relayed via external speakers other than for events with the prior approval of the Licensing Authority.

- PN15 Prominent, clear notices shall be displayed at *[all exits / in the beer garden]* requesting that customers respect the needs of local residents and leave the premises and the area quietly.
- PN16 The *[garden / patio]* must not be used by customers after the hours of *[hh:mm]* and *[hh:mm]*.
- PN17 Entertainment is to be held internally only and no music or speakers shall be provided to external areas of the premises.
- PN18 No inflatable play equipment shall be used without the agreement of the Licensing Authority with respect to its hours of use and other conditions as may be appropriate.
- PN19 The *[car park/ garden]* shall be managed to ensure that it is not used for *[ball games /skateboarding/ other noisy recreational activities]*
- PN20 Disposal of waste bottles into external receptacles where the noise will be audible to neighbouring properties must not occur between *[hh:mm]* and *[hh:mm]*.
- PN21 Arrangements must be put in place to ensure that waste collection contractors do not collect refuse between *[hh:mm]* and *[hh:mm]*.
- PN22 Staff shall be given adequate training to prevent them causing unnecessary noise when they leave the premises and prominent, clear notices displayed at all points where staff leave the building must instruct them to respect the needs of local residents and leave the premises and the area quietly.
- PN23 The Designated Premises Supervisor or a nominated representative shall receive and respond to complaints throughout the duration of all Regulated Entertainment.
- PN24 No fireworks or other pyrotechnics shall be used other than with the prior written consent of the Licensing Authority.
- PN25 The Licence Holder shall have full control over the sound amplification equipment to the main stage. The volume shall be adjusted according to the requirements of the Licensing Authority / Responsible Authority.
- PN26 The specification, and orientation of all speakers shall be agreed with the Licensing Authority / Responsible Authority.

Light Pollution

In certain premises where existing legislation does not provide adequately for the prevention of public nuisance, consideration will be given to conditions that ensure that flashing or particularly bright lights on or outside licensed premises do not cause a nuisance to nearby properties. The imposition of such conditions will be balanced against the benefits to the prevention of crime and disorder of bright lighting in certain places.

PN36 Any artificial lighting on the premises must not cause nuisance due to glare unless it is considered necessary by Havering Police to prevent crime and disorder.

CONDITIONS RELATING TO THE PROTECTION OF CHILDREN FROM HARM

General

Advice should be sought from the relevant Responsible Authority for Child Protection prior to application. The Responsible Authority may wish conditions from the pool of conditions to be applied to a licence issued to a premise or that the wording be varied from that published in the general pool of conditions to fit the individual requirements of that premise.

Applicants may wish to include conditions in their Operating Schedule to satisfy each of the four licensing objectives. Applicants should include conditions, which are appropriate to the size of the premises and relevant to the location of the premises and type of licensable activity carried out. Applicants should expand on how they will implement each of the conditions.

The imposition of conditions to protect children from harm will depend on a number of factors including the history of the premises, the nature of the activity and the time of the activity.

There is a presumption against permitting any access at all to children under 18 years for any activity or entertainment of a clearly adult or sexual nature, or involving significant gambling.

There is presumption against the presence of unaccompanied children under the age of 12 after 11.00 p.m.

In any other case, subject to the Premises Licence holder's or club's discretion, the expectation will be for unrestricted access for children subject to the terms of the 2003 Act.

Where entry is to be permitted, the operating schedule should outline the steps to be taken to promote the protection of children from harm whilst on the premises.

In certain premises where existing legislation does not provide adequately for the protection of children and where relevant matters have been identified in Operating Schedules, or as a result of representations being made, consideration will be given to applying conditions.

Age Restrictions - Cinemas

The Licensing Authority recognises the following film classifications:

- U Universal - suitable for audiences aged four years and over
- PG - Parental Guidance. Some scenes may be unsuitable for young children.
- 12A - Passed only for viewing by persons aged 12 years or older or persons younger than 12 when accompanied by an adult.
- 15 - Passed only for viewing by persons aged 15 years and over.
- 18 - Passed only for viewing by persons aged 18 years and over.

CP1 If the Licence Holder is notified by the Licensing Authority in writing that it objects to the exhibition of a film and specifying the grounds of objection, such film shall not be exhibited.

CP2 Not less than 28 days' notice in writing shall be given to the Licensing Authority of any proposal to exhibit any film which has not been classified by the British Board of Film Classification. Such a film may only be exhibited if written consent has been obtained from the Licensing Authority and in accordance with the terms of any such consent.

CP3 No film shall be exhibited unless:

- (i) it is a current news-reel; or
- (ii) it has been passed by the British Board of Film Classification as a U, PG, 12A, 15, or 18 film and no notice of objection to its exhibition has been given by the Licensing Authority, or
- (iii) the film has been passed by the Licensing Authority as U*, PG*, 12A*, 15*, or 18* with * being the name of the Council.

CP4 Immediately before each exhibition at the premises of a film (other than a current news-reel) passed by the British Board of Film Classification there shall be exhibited on the screen for at least five seconds in such a manner as to be easily read by all persons in the auditorium a reproduction of the certificate of the Board or, as regards a trailer, of the statement approved by the Board indicating the category of the film.

CP5 Every poster, advertisement, photograph, sketch, synopsis or programme relating to a film (other than a current news-reel) exhibited, or to be exhibited at the premises, shall indicate clearly the category of the film.

Theatres

The admission of children to the performance of a play will normally be left to

the discretion of the licence holder and no condition restricting the access of children to plays will normally be attached except where the entertainment incorporates that of an adult nature.

CP6 Whilst entertainment of an adult nature is taking place no person under the age of 18 shall be on the licensed premises and a clear notice shall be displayed at the entrance to the premises in a prominent position so it can be easily read by persons entering the premises in the following terms:

“NO PERSON UNDER 18 WILL BE ADMITTED”

Performances Especially for Children

Where performances are presented especially for unaccompanied children in theatres and cinemas consideration will be given to additional conditions that ensure adequate supervision and the well-being of children.

CP7 When performances are specially presented for children an attendant shall be stationed in the area(s) occupied by the children and in the vicinity of each exit provided that, on each level occupied by children, the minimum number of attendants on duty shall be one attendant per 50 children or part thereof.

CP8 When running licensable activities aimed primarily at children or persons under the age of 18, there shall be a person designated as being responsible for the safety of those under 18. This person(s) shall be clearly identifiable and shall have provided the Designated Premises Supervisor/ Duty manager with a Criminal Records Bureau check as being a suitable person to supervise children.

Teenage Discos or Similar Events

Where teenage discos or similar events are organised consideration will be given to an additional condition that ensures they are ticket only events.

CP9 Discos or similar events specially organised for children shall be managed as ticket-only events with no tickets available on the door.

Good practice Guidance

Restrictions on drinking areas

It may be necessary to restrict the areas where alcoholic drinks may be consumed in premises after they have been purchased from a bar. An example would be at a sports ground where the police consider it necessary to prevent the consumption of alcohol on the terracing of sports grounds during particular sports events. Such conditions may not only specify these

areas, but also indicate the circumstances and times of such a restriction. Such a measure may also be relevant to promote public safety.

CDGPG 1 No outside area shall be used for consumption of alcohol or provision of Regulated Entertainment unless the area is clearly marked or defined

Proof of age

It is unlawful for children under 18 to attempt to buy alcohol just as it is unlawful to sell or supply alcohol to them. To prevent such crimes, it may be necessary to require a policy to be applied at certain licensed premises requiring the production of "proof of age" before such sales are made. This will not be limited to recognised "proof of age" cards, but allow for the production of other proof, such as photo-driving licences, student cards and passports. The Licensing Authority supports the PASS accreditation system and where necessary conditions may refer directly to PASS accreditation. Such a measure may also be relevant to promote protection of children from harm. All operators and staff have both a duty and responsibility to ensure that only those who are of age are provided with intoxicants.

CDGPG2 All members of staff at the premises shall seek "credible photographic proof of age evidence" from any person who appears to be under the age of 18 years and who is seeking access to the premises or is seeking to purchase or consume alcohol on the premises. Such credible evidence, which shall include a photograph of the customer, will include a passport, photographic driving licence, or Proof of Age card carrying a "PASS" logo.

CDGPG3 Prominent clear notices shall be displayed at the point of entry to the premises and in a suitable location at any points of sale, advising customers that they may be asked to produce evidence of their age.

Crime prevention notices

Notwithstanding reluctance from the trade it may be necessary at some premises to support local crime prevention initiatives by displaying notices that warn customers of the prevalence of crime which may target them. For example, warning about pickpockets or bag snatchers or warnings about leaving bags unattended because of concerns about terrorism.

CDGPG4 Crime prevention notices and advice shall be displayed (if advised by Havering Police) in order to support local crime prevention initiatives.

Other signage

To deter those who might seek admission in breach of conditions subject to

which a licence or certificate is granted, it may be considered appropriate to require signage to be displayed setting out such conditions.

CDGPG5 Prominent, clear notices shall be displayed at every public entrance stating the actual operating hours of the premises.

CDGPG6 Prominent, clear notices shall be displayed at every public entrance stating any restrictions relating to the admission of children to the premises or other admission restrictions.

Drinks promotions

Conditions to control the price of alcoholic drinks will not be imposed except in exceptional circumstances to address irresponsible drinks promotions at particular premises where it can be shown that there is causal link between such promotions and crime and disorder in the vicinity of the premises. Premises when operating drinks promotions on particular days of the week or at particular times of the trading day shall include in the Operating Schedule written details of the extra measures in place to comply with each of the four licensing objectives whilst running the drinks promotion.

CDGPG7 When operating drinks promotions on any day of the week a written policy shall be produced. The policy shall detail the extra measures in place to deal with departing patrons both throughout and at the end of the promotion. It shall include the policy for refusing to serve persons who are drunk. The policy shall be agreed in writing by Havering Police.

CDGPG8 Alcoholic drinks shall not be supplied in such a way which will enable persons to consume unlimited quantities of alcoholic drinks on payment of a single payment.

Door supervisors

Conditions relating to the provision of Door Supervisors and security teams may be valuable in:

- preventing the admission and ensuring the departure from the premises of the drunk and disorderly, without causing further disorder;
- keeping out excluded individuals (subject to court bans or imposed by the licence holder);
- searching and excluding those suspected of carrying illegal drugs, or carrying offensive weapons; and
- maintaining orderly queuing outside venues prone to such queuing.

Where the presence of Door Supervisors conducting security activities is to be a condition of a licence, the mandatory condition M4 (that they have to be registered with the Security Industry Authority), will be included as a condition of the licence. Conditions may also be needed to deal with the number of such Door Supervisors, the displaying of name badges, the carrying of proof of registration, where and at what times they should be stationed on the

premises, and whether at least one female Door Supervisor should be available (for example, if female customers are to be the subject of body searches). Door Supervisors also have a role to play in ensuring public safety.

Unless the Operating Schedule comprehensively provides a valid reason why door supervision would not be required, Door Supervisors shall be expected at premises where:

- the licensed activities includes the sale of alcohol by retail, and
- the premises trade after midnight on any day of the week or has an approved capacity of over 200 persons.

Premises should detail the times and days of the week when Door Supervisors shall be employed.

CDGPG9 Premises which have a policy that includes the searching of persons shall have Door Supervisors of both sexes on duty at all times.

CDGPG10 All Door Supervisors working outside the premises or whilst engaged in the dispersal of patrons at the close of business shall wear 'High Visibility Clothing'.

Off sales

CDGPG11 All members of staff at the premises shall seek "credible photographic proof of age evidence" from any person who appears to be under the age of 18 years and who is seeking to purchase alcohol. Such credible evidence, which shall include a photograph of the customer, will include a passport, photographic driving licence, or Proof of Age card carrying a "PASS" logo.

CDGPG12 All occasions when persons have been refused service shall be recorded in writing and kept at the premises for six months.

CDGPG13 Prominent, clear notices shall be displayed at the premises about the supply of alcohol to minors and the relevant offences involved

Safe and Sound Partnership

The Safe and Sound Partnership, which exists between the London Borough of Havering, Havering Police, Havering Fire and Rescue Service, and licensed premise operators is already a significant factor in reducing crime and disorder in the Borough. It is recommended that in those areas of the Borough covered by the Partnership, existing and proposed licensed operators should participate in this scheme.

CDGPG14 The Licence Holder shall sign up to the Safe and Sound approved charter.

Designated Sporting Grounds

Premises, which are designated sporting grounds, are covered by other legislation and the issue of a Ground Safety Certificate. Designated Sporting Grounds which are covered by other legislation and have any restrictions or conditions attached should summarise all relevant restrictions in the Operating Schedule.

CDGPG15 In all public concourse bars that also provide food, prominent, clear notices shall be displayed that when the bars are closed no alcohol is for sale at the food outlets.

CDGPG16 All bars in public concourse areas shall have suitable shutters which can be closed and when closed no alcohol shall be on view from the public area.

CDGPG17 All alcohol served in the public concourse bars shall be supplied in non-glassware drinking vessels (e.g. plastic, polystyrene, waxed paper).

CDGPG18 There shall be [*number*] trained stewards positioned in each of the concourse areas while the bar is open for the sale of alcohol.

CDGPG19 A Personal Licence Holder shall be present at the Designated Sporting Ground throughout the hours that any of the public concourse bars are open and selling alcohol.

Queue Management and Dispersal Procedures

Queue management and dispersal procedures are designed to assist licensed premises in being good neighbours to residents and businesses in the vicinity so as to maintain the legitimate right of neighbours to enjoy their homes and businesses without disturbance.

PNGPG1 The Licence Holder shall implement a written queue management policy. All queuing outside the premises shall be managed in such a way that prevents noisy or rowdy behaviour and therefore minimises disturbance or nuisance to neighbours. The policy shall be approved in writing by the Licensing Authority.

PNGPG2 The Licence Holder shall implement a written dispersal policy, to move customers from the premises and the immediate vicinity in such a way as to cause minimum disturbance or nuisance to neighbours, both residential and business, and to make the minimum impact upon the neighbourhood in relation to potential nuisance, antisocial behaviour, crime and disorder. The policy shall be approved in writing by the Licensing Authority.

Litter and Refuse

In certain premises where existing legislation does not provide adequately for the prevention and control of litter, consideration will be given to conditions that ensure effective prevention, collection and removal of litter in the vicinity of the premises.

PNGPG3 The licence holder shall comply with the Voluntary Code of Practice For The Fast Food Industry (DEFRA 2003) or any document which supersedes this.

PNGPG4 After close of business a rubbish patrol should pick up any flyers or rubbish which has been left in the close vicinity of the premises by customers including any bottles, which may have been taken off the premises.

Children in Performances

Where existing legislation does not provide adequately for the protection of children and where relevant matters have been identified in Operating Schedules, or as a result of representations being made, consideration will be given to the following conditions.

CPGPG1 Dressing rooms and other backstage facilities shall be large enough to safely accommodate the number of children taking part in any performance. Every child shall have a seat and not be expected to sit on tables or to stand.

CPGPG2 All chaperones, supervisors and production crew shall receive instruction on the fire procedures applicable to the venue.

CPGPG3 Any person who is engaged in supervising children shall have been subject to a check through the Enhanced Disclosure of the Criminal Records Bureau.

CPGPG4 Child performers shall be supervised at all times including transfer from stage to dressing rooms and anywhere else in the premises.

CPGPG5 Child performers shall be accounted for at all times in case of an evacuation or emergency. To achieve this the following actions shall be taken prior to the arrival of the children at the venue:

(i) allocation of dressing rooms/changing areas with a list of the names of the children using each dressing room plus the names of the chaperones responsible for each dressing room/changing area

(ii) each chaperone to have a list of the children for whom they are responsible

(iii) the venue manager and management team to have copies of all the lists including any last minute alterations

CPGPG6 If special effects are proposed full details should be submitted to the Licensing Authority for separate approval.

Note: It is recommended that special effects are not used in children's productions. The use of special effects, including smoke, dry ice, rapid pulsating or flashing lights, may trigger allergies or an adverse reaction in some cases.

The Portman Group Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks

The Portman Group operates, on behalf of the alcohol industry, a Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks. The Code seeks to ensure that drinks are packaged and promoted in a socially responsible manner and only to those who are 18 years old or older. Complaints about products under the Code are considered by an Independent Complaints Panel and the Panel's decisions are published on the Portman Group's web site, in the trade press and in an annual report. If a product's packaging or point-of-sale advertising is found to be in breach of the Code, the Portman Group may issue a Retailer Alert Bulletin to notify retailers of the decision and ask them not to replenish stocks of any such product or to display such point-of-sale material, until the decision has been complied with. The Code is an important mechanism in protecting children from harm because it addresses the naming, marketing and promotion of alcohol products sold in licensed premises in a manner which may appeal to or attract minors.

Where appropriate and necessary, consideration can be given to attaching conditions to Premises Licences and Club Premises Certificates that require compliance with the Portman Group's Retailer Alert Bulletins.

CPGPG7 The premises shall comply with the Portman Group Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks and with the Portman Group's Retailer Alert Bulletins.

Proof of Age cards

Proof of age cards can be used in connection with the prevention of crime and disorder. However, where necessary and appropriate, a requirement for the production of proof of age cards before any sale of alcohol is made could be attached to any Premises Licence or Club Premises Certificate for the protection of children from harm. Any such requirement should not be limited to recognised "proof of age" cards, but allow for the production of other proof, such as photo-driving licences and passports. The Secretary of State strongly supports the PASS accreditation system which aims to approve and accredit various proof of age schemes that are in existence. This ensures that such schemes maintain high standards, particularly in the area of integrity and security, and where appropriate and necessary, conditions may refer directly to PASS accredited proof of age cards, photo driving licences, student cards and passports. As for conditions relating to crime and disorder, it should be noted that many adults in England and Wales do not currently carry any proof of age. This means that the wording of any condition will require careful thought. For example, the requirement might be to ensure sight of evidence of age from any person appearing to those engaged in selling or supplying alcohol to be under the age of 18 and who is attempting to buy alcohol. This would ensure that most minors - even those looking older - would need to produce proof of age appropriately before making such a purchase. Under

such an arrangement only a minority of adults might be affected, but for the majority there would be no disruption to their normal activity, for example, when shopping in a supermarket.

Proof of age cards can also ensure that appropriate checks are made where the presence of children is restricted by age at certain times, such as 16.

CPGPG8 All members of staff at the premises shall seek “credible photographic proof of age evidence” from any person who appears to be under the age of 18 years and who is seeking to purchase or consume alcohol on the premises. Such credible evidence, which shall include a photograph of the customer, will include a passport, photographic driving licence, or Proof of Age card carrying a “PASS” logo.

Challenge 21

Wording to be used where it is thought preferable to make the adoption/use of this policy mandatory within a Premises License

“ The premises shall adopt a Challenge 21 policy “

Appendix 2

TABLE OF DELEGATIONS OF LICENSING FUNCTIONS

MATTER TO BE DEALT WITH	FULL COMMITTEE	<i>SUB- COMMITTEE</i>	<i>OFFICERS</i>
Application for personal licence		If a representation Made	If no representation made
Application for personal licence, with unspent convictions		All cases	
Application for premises licence/club premises certificate		If a representation Made	If no representation made
Application for provisional statement		If a representation Made	If no representation made
Application to vary premises licence/club registration certificate		If a representation Made	If no representation made
Application to vary designated premise sale supervisor		If a police Representation	All other cases
Determination of request to be removed as designated premises supervisor		If a police Representation	All cases
Application for transfer of premises licence		If a police	All other cases

		Representation	
Application for Interim Authorities		If a police Representation	All other cases
Application to review premises licence/club premises registration		All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious, etc			All cases
Determination of a police representation to a temporary event notices		All cases	
Revocation of Personal Licence		All cases	
Revocation of Premises Licence		All cases	

Summary of licensing policy

Licensing policy 001

The LLA will seek to promote the Community strategy vision through the councils corporate plan and where appropriate, it will consider any local strategies or locally agreed plans when determining licensing applications

Licensing policy 002

The LLA seeks to encourage the highest standards of management in licensed premises. Where representations have been received, the LLA will use appropriate licence conditions to support the prevention of crime and disorder in the borough and the work of the community safety partnership.

Licensing Policy 003

The LLA will encourage membership of, and full participation in local pubwatch and safe and sound schemes.

Licensing Policy 004

In all cases the LLA will endeavour to balance its support for community entertainment with the need to promote the licensing objectives.

Licensing Policy 005

The LLA will have regard to equality and will expect an applicant to meet their statutory obligations in this area and not unlawfully discriminate or refuse service on grounds of race, gender, disability or age or display discriminatory signs.

Licensing Policy 006

The LLA will consult on and assess the likely impacts of this policy on race equality, and monitor the policy for any adverse impacts on the promotion of race equality.

Licensing Policy 007

The council encourages applicants to ensure that they have planning consent for the intended use and hours of operation, or otherwise have lawful planning status, before making an application for a premises licence.

Licensing Policy 008

The LLA is committed to protecting the amenity of residents and businesses in the vicinity of licensed premises. Where relevant representations are received, the LLA may attach appropriate conditions to licences, necessary to support the prevention of undue noise disturbance from licensed premises.

Licensing Policy 009

The LLA seeks to encourage the highest standards of management in licensed premises and expects the operating schedule to describe how these standards will be achieved in relation to promoting the licensing objectives.

Licensing Policy 010

With regards to safer clubbing, the LLA is committed to ensuring that, where appropriate, the design and management of dance and other venues maximises the safety of customers, performers and staff. The LLA will normally expect the submission of a drug policy as part of the operating schedule for applications for new premises licences and for variations to existing licences for night clubs and similar premises. Where relevant representations are made with regards to public safety, the LLA may impose conditions to control environmental risk factors such as overcrowding, ambient temperatures, availability of drinking water, and any other factors known to increase the risks to the safety of those taking drugs.

Licensing Policy 011

The LLA recognises that where there are gardens or tables and chairs placed outside the premises, users of these can cause nuisance. Where relevant representations are received in relation to a new or varied licence or on a review of a licence, the LLA will consider prohibiting or restricting the use of these areas.

Licensing Policy 012

The LLA supports the principle of flexibility in its approach to licensing hours and will consider the merits of each individual application. Nothing in this policy will oblige the holder of a premises licence or club premises certificate to remain open for the entire period permitted by the licence or certificate. The LLA will normally require all licensed premises to be cleared of patrons within a reasonable period after the end of the time permitted for licensable activities. Proposals for clearing the premises or a dispersal policy should be included in the detail of the operating schedule

Licensing Policy 013

Where relevant representations are received from responsible authorities and/or interested parties, the LLA may seek to restrict the operational hours of premises where this is necessary to promote the licensing objectives. The LLA may impose further limitations in hours upon review of the licence, particularly where the premises is shown to be the focus or cause of nuisance or anti-social behaviour.

Licensing Policy 014

In considering applications for new licences or variations to existing licences and licence reviews following the receipt of relevant representations, the LLA will take the matters listed below into account. These criteria will apply in different ways to different types of premises and licensable activities in the following order: the location of the premises and character of the area :

- the views of responsible authorities
- the views of interested parties
- past compliance history of current management
- the proposed hours of operation.

Licensing Policy 015

The LLA will keep potential areas of saturation (areas where we believe that no further licensed premises can be accommodated) under review. Where representations from responsible authorities or interested parties indicate that saturation is reached, it will consider introducing a special saturation policy for the area that will create a presumption for the refusal of all new applications.

Licensing Policy 016

The LLA expects all operators of premises intending to provide adult entertainment to include the relevant details in their operating schedule and include any controls they intend to put into place.

Licensing Policy 017

When considering applications for adult entertainment, and where relevant representations have been received, the LLA will take into account the nature of the area and the marketing, advertising arrangements and external views of the premises together with other factors proposed by the proprietor to mitigate concerns.

Licensing Policy 018

The LLA will require consideration of measures to protect children from harm to be reflected in the operating schedule where applicants identify the need, having regard to their type of premises or licensable activities. Applicants for premises licences and club premises certificates authorising the admission of children without accompanying responsible adults will be required to submit a child protection policy detailing the steps to be taken to ensure that children in their charge will be protected from harm when on licensed premises or engaged in activities relating to the licence.

Licensing Policy 019

Where events qualify for a Temporary Events Notice (TEN), applicants are encouraged to submit notifications at least four weeks prior to, but not more than 12 weeks before the date of the proposed event.

Licensing policy 020

The Licensing Authority recommends that for significant events, a Comprehensive risk assessment is undertaken by premises licence holders to ensure that crime and disorder and public safety matters are identified and addressed. Accordingly, for premises that wish to stage promotions, or events {as defined below} the Licensing Authority recommends that applicants address the Risk Assessment and debrief processes in their operating schedule.

Licensing Policy 021

The LLA will use relevant legislation to ensure compliance with the Licensing Objectives. Compliance with enforcement action may be material to determining applications and reviews.

Licensing Policy 022

In considering an application for a provisional statement the LLA will, as far as is reasonably practicable, apply the same standards as required for the grant of a premises licence.

Licensing Policy 023

The LLA will apply the full range of powers available to it when a review of a premise licence becomes necessary. It will however be mindful of the need to prevent the review process being used as an opportunity by responsible authorities and interested parties to re-run earlier representations without due cause.

MEETING	DATE	ITEM
LICENSING COMMITTEE	2 March 2010	5a

Policing and Crime Act 2009

The Home Office has laid a draft statutory instrument setting out the provisions of mandatory licensing conditions introduced by the Policing and Crime Act 2009.

Please note that these conditions are not yet in force.

The proposed dates for the conditions to come into force are:

6 April 2010: conditions 1, 2 and 3

1st October 2010: conditions 4 and 5

They will relate to all existing or future premises licenses or club premises certificates where the licence authorises the supply of alcohol.

Condition 4 only applies to premises where the licence or certificate authorises the sale by retail or supply of alcohol only for consumption off the premises.

Mandatory Licensing Conditions

1.—(1) The responsible person shall take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

(2) In this paragraph, an irresponsible promotion means any one or more of the following : activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children—

(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—

(i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or

(ii) drink as much alcohol as possible (whether within a time limit or otherwise);

Licensing Committee, 2 March 2010

(b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);

(c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less;

(d) provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event, where that provision is dependent on—

(i) the outcome of a race, competition or other event or process, or

(ii) the likelihood of anything occurring or not occurring;

(e) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner.

2. The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).

3. The responsible person shall ensure that free tap water is provided on request to customers

where it is reasonably available.

4.—(1) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.

(2) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.

5. The responsible person shall ensure that—

(a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—

(i) beer or cider: ½ pint;

(ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and

Licensing Committee, 2 March 2010

(iii) still wine in a glass: 125 ml; and

(b) customers are made aware of the availability of these measures.

MEETING	DATE	ITEM
LICENSING COMMITTEE	2 March 2010	5b

Hadvering Police Licensing Policy

Introduction

Hadvering Police is committed to working in partnership to reduce crime, disorder and anti-social behaviour in the borough, and fully supports the three year Hadvering Borough Statement of Licensing Policy published in 2008. This document is designed to support and complement the three year statement, but focuses on the police role in licensing, aiming to involve all police personnel across the borough in the intelligence gathering and tasking processes. The policy also outlines the minimum standards expected by police of the managers and operators of licensed premises across the borough.

Strategic Intention:

- Work in partnership to reduce alcohol related crime, fear of crime and anti-social behaviour in Hadvering.

Objectives:

- The Hadvering Police Licensing policy aims to promote the four licensing objectives as set out in the Licensing Act 2003:
 - Prevention of crime and disorder
 - Public safety
 - Prevention of public nuisance
 - Protection of children from harm
- Fully implement the requirements of the Licensing Act 2003, through the continued development of a joint police and local authority licensing office.
- Work in partnership with key partners in the borough and local licensed premises to maximise good practice and intelligence opportunities.
- Work in partnership with strategic partners in support of the Hadvering Crime and Disorder & Drugs Reduction Strategy.

Licensing Committee, 2 March 2010

- Maximise intelligence opportunities by developing information gathering and tasking processes.
- Maximise the police presence in intelligence led hot spots and licensed premises.

Policies

1. General

1.1 Where relevant representations are received from responsible authorities and/or interested parties, the police may seek to restrict the operational hours of premises where this is necessary to promote the licensing objectives. The police may ask the Local Licensing Authority (LLA) to impose further limitations in hours upon review of the licence, particularly where the premises is shown to be the focus or cause of nuisance or anti-social behaviour.

1.2 Police would expect all operators of premises intending to provide adult entertainment to include the relevant details in their operating schedule and include any controls they intend to put into place.

1.3 Police would expect consideration of measures to protect children from harm to be reflected in the operating schedule where applicants identify the need, having regard to their type of premises or licensable activities. Applicants for premises licences and club premises certificates authorising the admission of children without accompanying responsible adults should be required to submit a child protection policy detailing the steps to be taken to ensure that children in their charge will be protected from harm when on licensed premises or engaged in activities relating to the licence.

1.4 Where events qualify for a Temporary Events Notice (TEN), applicants are encouraged to submit notifications to the licensing unit at least four weeks prior to, but not more than 12 weeks before the date of the proposed event.

1.5 The police would recommend that for significant events, a comprehensive risk assessment is undertaken by premises licence holders to ensure that crime and disorder and public safety matters are identified and addressed.

2. Standards of Premises Management

2.1 The police seek to encourage the highest standards of management in licensed premises and expect the premises operating schedule to describe how these standards will be achieved in relation to promoting the licensing objectives.

2.2 Police suggest that an applicant for a premises licence would demonstrate a responsible management stance by showing a willingness to

operate to the guidelines set by the *London Borough of Havering 'Pool of Conditions'*¹. Recommended conditions from the pool, to include on a licence, which would support high standards of management are:-

CD1² All staff shall be suitably trained for their job function for the premise. The training shall be written into a programme, ongoing and under constant review, and must be available to a relevant Responsible Authority when called upon.

CD6 A Premises Daily Register shall be kept at the premise. This register will be maintained and kept for a minimum of 12 months. This register should record the name of the person responsible for the premise on each given day. The Premises Daily Register shall record all calls made to the premises where there is a complaint made by a resident or neighbour of noise, nuisance or anti social behaviour by persons attending or leaving the premises. This shall record the details of the caller, the time and date of the call and the time and date of the incident about which the call is made and any actions taken to deal with the call. The Premises Daily Register will be readily available for inspection by an Authorised Person throughout the trading hours of the premise. The Premises Daily Register will also record all incidents in relation to the use of any force by staff or Door Supervisors in the removal of persons from the premises. It shall record the time and date of the occurrence, name or brief description of the person removed, and details of the staff involved.

CD7 All Door Supervisors shall enter their full details in the Premises Daily Register at the commencement of work. This shall record their full name, home address and contact telephone number, the Door Supervisor's SIA registration number and the time they commenced and concluded working. If the Door Supervisor was supplied by an agency, details of that agency will also be recorded including the name of the agency, the registered business address and a contact telephone number.

3. Nightclub Policies

3.1 With regards to "Safer Clubbing", the police, as part of the local licensing authority, are committed to ensuring that, where appropriate, the design and management of dance and other venues maximises the safety of customers, performers and staff. Police will normally expect the submission of a drug policy as part of the operating schedule for applications for new premises licences and for variations to existing licences for night clubs and similar premises. The police may make appropriate representations with regards to

¹ From London Borough of Havering Statement of Licensing Policy 2008

² Reference to a Condition taken from the Pool of Conditions

public safety, and request the LLA to impose conditions to control environmental risk factors such as overcrowding, ambient temperatures, availability of drinking water, and any other factors known to increase the risks to the safety of those taking drugs.

3.2 Bottles and Glasses

Glass bottles may be used as weapons inflicting more serious harm during incidents of disorder. Subject to a risk assessment a condition may be imposed to prevent sales of drinks in glass bottles for consumption on the premises.

Glasses containing drinks may be used as weapons during incidents of disorder and in un-toughened form, can cause very serious injuries. Therefore, in appropriate cases consideration will be given to conditions requiring either the use of plastic containers or toughened glass, which inflict less severe injuries. Location and style of the venue and the activities carried on there will be particularly important in assessing whether the imposition of such a condition is necessary.

3.3 Capacity limits

Although most commonly made a condition of a licence on public safety grounds, consideration will also be given to conditions which set capacity limits for licensed premises or clubs where it may be necessary to prevent overcrowding which can lead to disorder and violence. Where such a condition is considered necessary, consideration will also be given as to whether Door Supervisors will be needed to ensure that numbers are appropriately controlled and monitored.

Where there is an agreed maximum capacity, this figure shall include all staff and entertainers. The capacity may be set for each part of the premises where appropriate. The figure may detail seating capacity and vertical capacity. Where there is a change of use of the premises throughout the trading day the figure should show the change of capacity and the times where relevant.

To address public safety the police would wish to be supplied with a written risk assessment detailing the maximum capacity figure the applicant intends to permit on the premises at any given time.

3.4 Misuse of Drugs

London Borough of Havering is committed to addressing the problem of the misuse of drugs at all licensed premises but in particular at music and dance venues and supports the "Safer Clubbing" strategy which can be viewed at <http://www.drugs.gov.uk>.

The role of club owners, managers and event promoters is to ensure that all aspects of their venue are designed and run in ways which maximise the safety of customers, performers and staff.

Licence conditions that would be sought by Havering Police are:-

CD20 The Licence Holder shall implement a written Drugs Policy. This shall detail the strategies to minimise the use and supply of illegal drugs within the premises. The Drugs Policy shall include a structured training programme covering the issues relevant to the misuse of drugs in relation to licensed premises, which will be delivered to all staff. This Policy shall be approved in writing by Havering Police.

CD21 The Designated Premises Supervisor shall hold a National Certificate of Drugs Awareness qualification, run by the BII or similar accredited body.

CD22 All staff shall be trained in dealing with persons who are incapacitated through the use of drugs or the combined effect of drugs and alcohol.

3.5 CCTV

The presence of a properly specified and fully operational CCTV system can make an important contribution towards public safety and the prevention of crime. It will also assist in the investigation and identification of those involved should an incident occur immediately outside or inside licensed premises. Conditions imposed may not just require CCTV on the premises, but also specify the precise location of each camera, the requirement to maintain all equipment in working order, retain a system file and to secure recordings for an appropriate period of time.

An 'Operational Requirement' (OR) should be drawn up for each CCTV system to ensure that it is fit for purpose. Advice on how to complete an 'OR' can be found in the Home office Scientific Development Branch (HOSDB) publication 55/06 'CCTV Operational Requirements Manual'. The Havering Police Crime Prevention Office will provide individuals conducting risk assessments when preparing operating schedules with advice relevant to current standards. At the time of publication these are provided for in the HOSDB publication 09/05 'UK Police Requirements for Digital CCTV Systems.

Conditions which may be sought by Havering Police are:-

CD15

A properly specified and fully operational CCTV system shall be installed or the existing system maintained to a satisfactory standard. The system will incorporate a camera covering each of the entrance doors and be capable of providing an image which is regarded as 'identification standard' of all persons entering and/or leaving the premises. All other areas of risk identified in the Operational Requirement shall have coverage appropriate to the risk.

CD16

The installation or upgrading of any CCTV system shall comply with current best practice. In addition the documentation listed below shall be included in a

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'System File' which should be readily available for inspection by the relevant authority;

Site plan showing position of cameras and their field of view.

Code of Practice.

Performance specification e.g. storage capacity, image file size, IPS for each camera and purpose of each camera position

Operational requirement.

Incident log.

Maintenance records including weekly visual checks.

CD17

To obtain a clear head and shoulders image of every person entering the premises on the CCTV system, persons entering the premises should be asked to remove headwear, unless worn as part of religious observance.

CD18

The CCTV system shall incorporate a recording facility and all recordings shall be securely stored for a minimum of one calendar month. A system shall be in place to maintain the quality of the recorded image and a complete audit trail maintained. The system will comply with other essential legislation, and all signs as required will be clearly displayed. The system will be maintained and fully operational throughout the hours that the premises are open for any licensable activity. For premises using a video recording system, the cassette tapes shall be used on no more than 12 occasions to maintain the quality of the recorded image.

CD19

The positions of all CCTV cameras shall be clearly shown on a set of plans which should form part of the 'System File'. Any alteration to the system should only be carried out after consultation with and written approval of Havering Police and the Licensing Authority.

3.6 First Aid

PS22 An adequate and appropriate supply of first aid equipment and materials shall be available on the premises.

PS23 At least one trained first-aider shall be on duty when the public are present.

PS24 Notices detailing the availability of first aid equipment shall be prominently displayed & shall be protected from damage or deterioration.

3.7 Proof of age

CDGPG2 All members of staff at the premises shall seek "credible photographic proof of age evidence" from any person who appears to be under the age of 18 years and who is seeking access to the premises or is seeking to purchase or consume alcohol on the premises. Such credible evidence, which shall

include a photograph of the customer, will include a passport, photographic driving licence, or Proof of Age card carrying a "PASS" logo.

POLICE WOULD WISH TO SEE THE PREMISE ADOPT & SUPPORT THE CHALLENGE 21 SCHEME & ACCEPT PASSPORT & PHOTOGRAPHIC DRIVING LICENCE IDENTIFICATION

3.8 Door Supervisors

Conditions relating to the provision of Door Supervisors and security teams may be valuable in:

- preventing the admission and ensuring the departure from the premises of the drunk and disorderly, without causing further disorder;
- keeping out excluded individuals (subject to court bans or imposed by the licence holder);
- searching and excluding those suspected of carrying illegal drugs, or carrying offensive weapons; and
- maintaining an orderly queuing system outside venues prone to such queuing.

Where the presence of Door Supervisors conducting security activities is to be a condition of a licence, the mandatory condition M4 (that they have to be registered with the Security Industry Authority), will be included as a condition of the licence. Conditions may also be needed to deal with the number of such Door Supervisors, the displaying of name badges, the carrying of proof of registration, where and at what times they should be stationed on the premises, and whether at least one female Door Supervisor should be available (for example, if female customers are to be the subject of body searches). Door Supervisors also have a role to play in ensuring public safety.

Unless the Operating Schedule comprehensively provides a valid reason why door supervision would not be required, Door Supervisors shall be expected at premises where:

- the licensed activities includes the sale of alcohol by retail, and
- the premises trade after midnight on any day of the week or has an approved capacity of over 200 persons.

Premises should detail the times & days of the week when Door Supervisors shall be employed.

Conditions which may be sought by Havering Police are:-

CDGPG9 *Premises which have a policy that includes the searching of persons shall have Door Supervisors of both sexes on duty at all times.*

CDGPG10 *All Door Supervisors working outside the premises or whilst engaged in the dispersal of patrons at the close of business shall wear 'High Visibility Clothing'.*

3.9 Queue Management and Dispersal Procedures

Queue management and dispersal procedures are designed to assist licensed premises in being good neighbours to residents and businesses in the vicinity so as to maintain the legitimate right of neighbours to enjoy their homes and businesses without disturbance.

Where applicable, Havering Police will seek to impose the following conditions:-

PNGPG1 The Licence Holder shall implement a written queue management policy. All queuing outside the premises shall be managed in such a way that prevents noisy or rowdy behaviour and therefore minimises disturbance or nuisance to neighbours. The policy shall be approved in writing by the Licensing Authority.

PNGPG2 The Licence Holder shall implement a written dispersal policy, to move customers from the premises and the immediate vicinity in such a way as to cause minimum disturbance or nuisance to neighbours, both residential and business, and to make the minimum impact upon the neighbourhood in relation to potential nuisance, antisocial behaviour, crime and disorder. The policy shall be approved in writing by the Licensing Authority.

3.10 Noise and Vibration

In certain premises a noise impact assessment of the licensable activities at the premises should be carried out to the satisfaction of the licensing authority. Proposed steps to prevent noise must, if necessary, also be submitted for inclusion within the operating schedule.

If applicable, the following conditions will be expected:-

PN17 Entertainment is to be held internally only and no music or speakers shall be provided to external areas of the premises.

PN22 Staff shall be given adequate training to prevent them causing unnecessary noise when they leave the premises and prominent, clear notices displayed at all points where staff leave the building must instruct them to respect the needs of local residents and leave the premises and the area quietly.

PN26 The specification, and orientation of all speakers shall be agreed with the Licensing Authority / Responsible Authority.

The police make these *recommendations* merely to encourage a responsible management stance in a residential environment. It is accepted that these would appear far more appropriate if requested by the Pollution Department.

4. Test Purchase Operations

In support of the Licensing Objective of “protecting children from harm”, the police Licensing Officer and Safer Neighbourhood Teams will work in partnership, on a regular basis, with The Trading Standards Service to conduct test purchasing of all age restricted products across the Borough. This policy is designed to promote and enforce a responsible stance around the sale and supply of alcohol by off-licences. Where breaches of the law are detected, consideration will be given to prosecution and/or a review of the relevant premises or personal licence and its conditions.

5. Use of Drugs Itemiser

The drugs itemiser is an extremely useful tool for use in seeking compliance against the 'prevention of crime and disorder' objective. It also extends the partnership activity of the police and Local Authority, in this case being the Alcohol and Violent Crime Reduction Office and the DAAT. The police Licensing Officer, in partnership with the above mentioned agencies will conduct drug itemiser sweeps at licensed premises on a regular basis. When traces of drugs are detected, the licensing officer will write to the Designated Premises Supervisor to alert them to the issue, remind them of their responsibilities, and warn them regarding potential prosecution and/or a review of their premises or personal licence.

6. Premises coming to the notice of Police

6.1 Levels of crime, disorder and anti social behaviour associated with licensed premises, are monitored by way of crime and intelligence reports on a daily basis as part of the police Daily Management Meeting. Appropriate actions can therefore be tasked on a fast-time basis as necessary.

6.2 On a fortnightly basis, the Tactical Tasking and Coordinating Group (TTCG), a police and local authority partnership forum, reviews levels of crime, disorder and anti social behaviour across the borough and will highlight licensing issues or licensed premises which have come to notice, including relevant intelligence. Appropriate actions can be tasked at this meeting to address the issues raised. The actions can be tasked to any appropriate team, whether it is by way of high visibility police patrols in an area, licensing visits by the Licensing Manager, Duty Officer or local Safer Neighbourhood Team, or further intelligence gathering to build a fuller picture.

6.3 Where an incident of violence is associated with a licensed premises, or where police have concerns regarding incidents of crime, disorder or the misuse of drugs associated with a premises, a meeting will be arranged between the Licensing Inspector and the Designated Premises Supervisor. At the meeting, a suitable action plan will be drawn up to address the issues raised, over an appropriate timeframe. Where the issues are not addressed to the satisfaction of the police, a Licensing Act review will be considered.

7. Safe and Sound (Pubwatch) Schemes

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Havering Police fully support the Safe and Sound schemes organised by the local authority across the borough of Havering and will commit to appropriate police representation at each meeting of each scheme. Representation will generally be by the Licensing Officer and local Safer Neighbourhood Teams.

MEETING	DATE	ITEM
LICENSING COMMITTEE	2 March 2010	6

**LACORS' GUIDANCE:
THE ROLE OF ELECTED MEMBERS IN
RELATION TO LICENSING COMMITTEE
HEARINGS UNDER THE LICENSING
ACT 2003**

FOR LOCAL AUTHORITIES IN ENGLAND

Updated January 2010

Note:

- This Guidance, originally issued in 2005, has been updated to take account of the 2007 National Model Code of Conduct (The Local Authorities (Model Code of Conduct) Order 2007, and again in 2010 to take account of the change in the status of elected councillors as interested parties as the result of the amendments to s13(3) of the Licensing Act 2003 brought about by s33 Policing and Crime Act 2009.
- Hard copy of this Guidance is available from LACORS either via a download from its website (free for local authority users) or a copy can be ordered from LACORS, telephone 020 7 665 3888 (a charge will be made).
- A separate LACORS' leaflet for Elected Members which summarises the practical suggestions contained within this document, is available via LACORS' website.

In offering this advice LACORS wishes to make it clear that:

- *Legislation may change over time and the advice given is based on the information available at the time the guidance was produced. It is not necessarily comprehensive and is subject to revision in the light of further information.*
- *Only the courts can interpret statutory legislation with any authority.*
- *This advice is not intended to be a definitive guide to, nor substitute for, the relevant law. Independent legal advice should be sought where appropriate.*

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FOREWORD

“As a member of your authority, you are at the heart of local democracy... You represent people in your area and take forward concerns..., drive change, participate in community and action groups, and make decisions for the benefit of the community as a whole. Sometimes these roles and responsibilities conflict, and you need to strike a balance between representation, driving change and ensuring the authority can even-handedly decide matters on their merits – and be seen to be doing so.”

“Lobby groups, dual-hatted members and the Code of Conduct – Guidance for Members”
The Standards Board for England September 2004

The Licensing Act 2003 put local authorities firmly in the centre of decision making upon licences for regulated entertainment and the provision of alcohol, as well as late night refreshment. Concerns regarding this shift in responsibility have centred around doubts surrounding the impartiality of Councillors and especially as regards those who will make-up the Licensing Committee that will decide upon applications. This concern arises from a view that Councillors are subject to local political pressures and a belief that they will regard the views of local residents as taking precedence over the other interests of their communities.

More broadly, public attention has focused upon the probity of politicians, at both the local and national level, particularly since the outcomes of the Nolan Committee's Third Report in 1997 on the Standards in Public Life. This report resulted in the Local Government Act 2000 which included a Model Code of Conduct for Councillors and also took account of the Human Rights Act 1998.

Every authority was required to adopt a Code of Conduct setting out rules governing the behaviour of its Members. The original 2001 Model Code has been superseded by a new Model Code of Conduct for Members which was issued by the Government on 4 April 2007.

This guidance reflects the provisions of the new Model Code, and aims at enabling local Councillors to represent all of their constituents in a way that does not expose their local authority to accusations of pre-determination, bias or maladministration.

As regards the Licensing Committee, the role of the Elected Member as part of that Committee will involve balancing the multiple needs and interests of the local community, whilst prioritising the four Licensing Objectives of the Licensing Act 2003. In doing so the Elected Member must maintain his/her impartiality and, as public perception of probity is critical, his/her appearance of impartiality too, during the decision making process. This guidance is intended to assist local authorities ensure their Elected Members achieve this.

The guidance within is written with *all* Elected Members in mind, whether they sit on a Licensing Committee or not. It is intended to assist local authorities to devise / review and update local guidance to take account of the new licensing duties, as well as perhaps informing training provided for Councillors. Local Authorities may wish to present this guidance to both their Licensing Committee and their Standards Committee to promote discussion and agreement on local procedure.

A number of local authority officers assisted LACORS with the original version of this guidance including Philip McCourt, Head of Legal Services and Monitoring Officer at Harborough. Pauline Powell, Senior Solicitor at Bristol and Peter Large, at Westminster City Council have also provided helpful comments and advice. The Association of Council Secretaries and Solicitors (ACSeS), The Association of London Government (ALG) as was, and the Society of Local Authority Chief Executives (SOLACE) were also consulted at the time and the Standards Board for England was particularly helpful.

Finally, this version of the guidance is intended for local authorities in England; although much of this document is relevant for local authorities in Wales.

Cllr Geoffrey Theobald OBE
Chairman
LACORS

A) INTRODUCTION

1. The Licensing Act 2003

The Licensing Act 2003 was approved by Parliament on 10th July 2003. As a result, local authorities, in the form of 'Licensing Authorities', took on the increased responsibilities of licensing premises and persons with regard to the carrying-out of licensable activities including the sale and supply of alcohol; provision of regulated entertainment; and the provision of late night refreshment. Key to the process of deciding licence applications will be each Licensing Authority's Licensing Committee.

Each Licensing Committee comprises between 10-15 Elected Members and is able to form sub-committees of no more than 3 Elected Members, to decide upon licence applications, where there are objections and / or relevant representations. Should the applicant or those who have made representations / objections be dissatisfied with the decision of the Licensing Committee, there is then the right of appeal to the Magistrates' Court.

Whilst all local authority actions are subject to rules regarding probity, these Licensing Committees (like the existing Local Authority Planning Committees) need to be especially diligent in this respect. At the time, the DETR (subsequently ODPM and now CLG) "New council constitutions: guidance pack / Modular constitutions for English local authorities" stated:

13.08 Decision making by Council bodies acting as tribunals

Many of the licensing and enforcement functions of ordinary committees will entail them acting in a quasi judicial capacity...The Council, a councillor or an officer acting as a tribunal or in a quasi judicial manner ... will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights."

This guidance sets out the general rules regarding probity in local government and considers how these will apply specifically to the Licensing Committee functions under the Licensing Act 2003.

2. Probity in local government

The following information is well known in local government, however, it is intended to serve as a useful background summary.

There are a number of sources of rules regarding probity in local government:

- The Local Government Act 2000 (primary and secondary legislation)
- Rules of Natural Justice (case law)
- The Human Rights Act 1998 (primary legislation and case law)

The Local Government Act 2000

As a result of general concern regarding probity in central government, The Committee on Standards in Public Life was set up in October 1994, under the Chairmanship of Lord Nolan. The Committee's remit was to consider the standards of conduct in various areas of public life and to make subsequent recommendations. The Committee's first report focused upon MPs, Ministers and Civil Servants, Executive Quangos and NHS bodies; its second report looked at local public spending bodies; and the Third Report of the Committee considered conduct in local government (in England, Scotland and Wales).

The Third Report's recommendations resulted in a Government Green Paper "Modernising Local Government: A new Ethical Framework" published in April 1998; a White Paper "Modern Local Government, in Touch with the People" (Cm4014) in July 1998; draft legislation in the form of a document "Local Leadership, Local Choice" (Cm1298); and finally the Local Government Act which received Royal Assent in July 2000.

The Local Government Act 2000 resulted in a number of new statutory requirements, the detail of which was set-out in Statutory Instruments:

- i. Principles
- ii. Model Code of Conduct
- iii. Standards Committees
- iv. Standards Board

These were all designed to help Local Authorities avoid allegations of malpractice / maladministration etc. Further detail is provided on these items below.

(i) Principles

The Principles of Public Life are:

Selflessness - Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity - Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity - Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability - Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness - Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Personal Judgement - Members may take account of the views of others, including their political group, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for Others - Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

Duty to Uphold the Law - Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship - Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership - Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

(ii) National Model Code of Conduct

The National Model Code of Conduct was originally established by Statutory Instrument 2001 No. 1401. It has recently been updated, with the 2007 version established by Statutory Instrument 2007 No. 1159 "The Local Authorities (Model Code of Conduct) Order 2007. As a result, every Local Authority is required to adopt a Code of Conduct, to govern the behaviour of its Elected Members. Authorities now have until 1 October 2007 to adopt the Code of Conduct 2007. After 1 October, Members of Authorities which have not adopted the 2007 Code will be covered by it automatically.

Local Authorities are empowered to add to the provisions in the National Model Code of Conduct, provided they are not inconsistent with it.

The National Model Code of Conduct covers areas of individual behaviour such as Members not abusing their position or not misusing their Authority's resources. In addition there are rules governing disclosure of interest and withdrawal from meetings when Members have relevant interests. Members are also required to record their financial and other interests. It is worth noting that the 2007 Code incorporates new provisions relating to personal and prejudicial interests, with a new definition of personal interests ("family" and "close association") and in certain circumstances permits participation of Members having personal or prejudicial interests. The 2007 Code also includes new provisions relating to bullying, the promotion of equality, access to information and disclosure of confidential information.

This guidance will look at how the Code may be related to the Licensing Committee context.

(iii) Standards Committees

Under the Local Government Act 2000 every Local Authority is required to set-up a local Standards Committee. These are responsible for promoting and maintaining high standards of conduct by Members and co-opted Members of the authority, and to assist members and co-opted Members to observe the Local Authority's Code of Conduct. The Committee should advise Members of any changes to the Code of Conduct; monitor the operation of the Code; and advise and train Members on matters relating to the Code of Conduct. The Standards Committees can also carry-out other functions as the Local Authority sees fit. The Standards Board in England (and the Ombudsman in Wales) may also issue guidance as to the exercise of functions by the Standards Committees.

(iv) The Standards Board for England

The Standards Board for England was formally established in March 2001, and is intended to be independent of government. The Board's aim is to ensure that standards of ethical conduct are being maintained by local authorities and it deals with any complaints of misconduct against individual members.

The 2007 Model Code should be read in conjunction with the current Guidance from the Standards Board from England. LACORS encourages all Authorities particularly to take note of the Board's advice on adoption of the Model Code:

"To avoid confusion with the previous Code, the Standards Board for England...encourages your local authority to adopt the Code of Conduct at its first opportunity.

"It is also important that the Code of Conduct is adopted in its model form, without amendment. This will give certainty to Members and the public as to what standards are expected. It will ensure consistency throughout local authorities, avoiding confusion for Members on more than one authority and for the public. It will also minimise the legal risk of your authority adopting additional provisions which are unenforceable."

Further information about the Standards Board can be found at:

<http://www.standardsboard.gov.uk/>

Guidance from the Standards Board on the 2007 Model Code can be found at:

<http://www.standardsboard.gov.uk/TheCodeofConduct/Guidance/filedownload,5982,en.pdf>

3. Natural Justice - rules of the English Common Law

It should be noted that the following information has been provided to set out the concepts involved in discussion of 'natural justice' and that the case law is primarily provided so as to demonstrate these concepts. Consideration of how these affect local authority functions under the Licensing Act 2003 specifically is provided in subsequent sections of this document.

Some debate exists as to whether Licensing Committees under the Licensing Act 2003 are 'administrative' or 'quasi-judicial' bodies. It may be worth quoting one constitutional lawyer's words on the topic of "judicial", 'quasi-judicial' and 'administrative' functions: the distinction:

"The courts have long been struggling with the distinction between 'judicial', 'quasi-judicial' and 'administrative' functions in an attempt to bring the ever-expanding administration of government departments under judicial control. Two lines of thought were apparent. The first emphasised the distinction between a body which was exercising powers under restrictive rules and a body which was conferred with a wide measure of administrative power (see Gordon DM "Administrative" tribunals and the courts (1933) 49 LQR 94). The second line of thought placed great weight on the absence of any true distinction between judicial and administrative functions, regarding the former to be a specialised form of the latter (see Jennings I (Sir) "The Law and the Constitution" 5th edn 1959 Appendix 1). As a result of the confusion, the phrase 'quasi-judicial' came to be used to cover those functions which were not easily compartmentalised into either one of other concepts." (Hilaire Barnett "Constitutional & Administrative Law" 2001p.1081)

The reason the distinction between 'judicial' and 'administrative' was important was that stricter rules of natural justice were required for the former and thus the decisions of public bodies which were viewed as being 'judicial' and not 'administrative' were more open to judicial review by the courts. It was thus in the interests of public bodies that a greater number of its decisions were viewed as being 'administrative'. However, since *Ridge v Baldwin (1964) AC 40* this distinction has been far less important as in this case it was held that irrespective of the type of body which made the decision (i.e 'administrative' or 'judicial'), procedural fairness and other such rules, are applicable.

LACORS' guidance "Judicial Review: A Summary" provides some further detail regarding the grounds of judicial review. However, the key item which should be borne in mind as regards the Elected Members sitting on Licensing Committees is that there must be **no procedural impropriety** and thus the decision must be *free from the appearance of bias* and that there must have been a *fair hearing*.

Free from the appearance of bias – Bias has been defined as "an attitude of mind which prevents the [decision-maker] from making an objective determination of the issues that he has to resolve"¹.

The key concept as regards bias is that there is no need for proof of actual or potential bias for there to be 'procedural impropriety' shown. It is sufficient that there is an *appearance* of bias. This is demonstrated in the case of *R v Bow Street Magistrates ex parte Pinochet (No 2) (1999)* where Lord Hoffman disqualified himself as a judge in the case of the extradition of General

¹ *Re Medicaments and Related Classes of Goods No. 2 [2001] 1 W.L.R. 727*

Pinochet as Lord Hoffman had connections with Amnesty International, one of the parties to the case.

Further discussion of the case law affecting local authority decisions and functions under the Licensing Act 2003 is contained in section B3.

Fair hearing - For a hearing to be 'fair' a number of conditions must be satisfied including the right for the individual to know the opposing case; generally the right to call witnesses; the ability to question witnesses; the right to legal representation; and generally the right to be given reasons for any decision made. Sometimes a 'written' hearing will suffice and no 'oral' hearing is required.

Two well-know example cases relating to the right to a fair hearing are:

Cooper v Wandsworth Board of Works (1863) - A statute prohibited any building being erected without giving seven days notice to the Board of Works. Mr Cooper started putting up a house without giving notice and thus, the Board demolished the building. Whilst the Board was within its statutory powers in carrying-out the demolition, the Court held that the individual did have a right to a 'fair hearing' before the decision was taken.

Ridge v Baldwin (1964) - A Police Constable was dismissed without having been given a hearing by his superiors. This was held by the Court to have been 'illegal' as he was entitled to a fair hearing before any decision was made.

Licensing Committees will therefore need to follow clear procedures to ensure that the hearings which take place are fair and are seen to be fair: LACORS' Committee Guidance is also available.

4. The Human Rights Act 1998

The Human Rights Act 1998 incorporated into UK law the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms which was originally drafted and enacted by the Council of Europe in 1950. This Convention had been ratified in 1951, although the UK did not allow its citizens the right to petition the Court of Human Rights (in Strasbourg), until 1965.

Prior to the Human Rights Act 1998 the status of the rights provided for by the Convention, merely provided UK judges with another means of interpreting UK statute. However, since the enactment of the Human Rights Act 1998, judges have been able to utilise the rights set-out in the Convention as part of judicial review proceedings against public bodies.

All rights in the Convention are set-out in the form of Articles and it is Article 6 which is particularly important to consider with regards to Licensing Committee procedures and decisions.

Article 6

1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

Article 6(1) has been interpreted as requiring a tribunal which is independent from the Executive; and free from pressure and bias. The process must also be fair in terms of parties being able to put their case, hear and challenge witnesses.

The initial key question, however, as regards Licensing Committee decisions, is whether they involve a “*determination of...civil rights and obligations*”. It has been held that this can apply to proceedings before an ‘administrative’ tribunal (the Regional Land Commission) in *Eckle v Federal Republic of Germany 1989 5 EHRR1 para 73* and also to a decision of a public body where the consequences of an administrative decision affected an individual’s civil rights (see *Konig v Federal Republic of Germany 1980 2 EHRR 170* which concerned an individual’s licence to practice as a doctor in his own clinic). As regards Licensing Committees, it is also likely to be argued that the decisions affect a person’s civil rights in that the decision may affect his/her ability to earn a living and, in particular, affect a person’s possessions in the case of an existing licence holder.

Regardless of the view of the applicability of Article 6 to the decisions of Licensing Committees, the House of Lords has held¹ that, in any event, there is now no real difference between the common law test of bias and the requirements under Article 6 of an independent and impartial tribunal.

¹ *Lawal v Northern Spirit Ltd [2003] UKHL 35*

5. Purpose of this guidance

In the same way that Members involved in the Planning Process and Planning Committees might find themselves in situations where it is difficult to balance their representational and decision-making roles, so the same can apply in the licensing context.

Planning was referred to in the Third Nolan Report as "*... probably the most contentious matter with which local government deals and is the one on which we have received by far the most submissions. Inevitably the planning process produces both winners and losers. The planning process puts elected councillors into the position of being required to exercise their representational role on behalf of their constituents. Those who lose out frequently put the blame on the process itself.*" Further, the Nolan Committee stated "*We have particular concerns ...about local authorities granting themselves planning permission*" (Summary of Third Report).

This could equally apply to the licensing process under the Licensing Act 2003. There will inevitably be licence applications which relate to premises which the local authority may view as important, for example for economic regeneration, and there is also the provision for local authorities to apply for their own Premises Licences covering public land, and indeed have been encouraged to consider doing so by the Government to help ensure cultural diversity (see Licensing Act 2003 Guidance 16.37).

This LACORS guidance, which should be considered along with the Guidance of the Standards Board for England, is therefore provided to assist local authorities identify and avoid problems which previously were associated with the planning function, thereby protecting themselves and their Members from accusations of maladministration or from judicial review proceedings. It is suggested that Licensing/ Legal Officers consider using both sources of guidance in advising their Members. A more concise leaflet is available from LACORS which summarises the suggestions in this guidance and is intended for distribution to Members directly.

The guidance is purely advisory. It is hoped that it will prove useful to local authorities in creating their own mechanisms to ensure public faith in the Licensing Act 2003 regime.

B) SUBSTANTIVE ISSUES

1. Introduction

The 2007 National Model Code of Conduct is statutory and sets out expectations as to the conduct of Elected Members of local authorities in the conduct of their official duties (and to some extent, their private life). Crucial is the separation of private from public interests but there are also provisions regarding any actions bringing the authority into disrepute, relations with other Members, the public and staff, and treatment of confidential material. Elected Members are expected to comply with the spirit and letter of their local codes.

The 2007 Code also addresses issues around respect for others, equality, bullying, access to information, disclosure of confidential information, as well as developing the definition of personal interest to include “family” and “close association”.

General Obligations under the 2007 Code are:

- You must treat others with respect [para 3(1)];
- You must not do anything which may cause your authority to breach any equality laws [para 3(2)(a)];
- You must not bully any person including other councillors, council officers or members of the public [paras 3(2)(b)&(c)];
- You must not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of the authority [para 3(2)(d)];
- You must not disclose confidential information, or information which you believe to be of a confidential nature (except in defined circumstances) [para 4(a)];
- You must not prevent anyone getting information that they are entitled to by law [para 4(b)];
- You must not bring your office or authority into disrepute while acting in your official capacity, or at any time through criminal activity that leads to a criminal conviction [para 5];
- You must not use, or attempt to use, your position improperly to the advantage or disadvantage of yourself or anyone else [para 6(a)];
- You must only use or authorise the use of the resources of the authority in accordance with its requirements [para 6(b)(i)];
- You must make sure you use the authority's resources for proper purposes only [paras 6(b)(ii) & 6(c)];
- You must have regard to advice from your monitoring officer or chief finance officer where they give it under their statutory duties [para 7].

Full details of these obligations are available in the Standards Board's Guidance.

Further Sections of the National Model Code of Conduct cover Personal Interests, Disclosure of Personal Interests, Prejudicial Interests, Participation in Relation to Disclosed Interests, and the Register of Members' Interests. Again, full details are available in the Standards Board's Guidance.

The remainder of this document details instances where the 2007 National Model Code might impact specifically upon issues arising during the Licensing Act 2003 process. LACORS' suggestions as to how local authorities and their Elected Members may wish to interpret the Code of Conduct in this context are provided. These suggestions are

bold and italicised. LACORS' suggestions in subsequent sections are similarly highlighted.

2. Interests - 2007 National Model Code of Conduct

Full and detailed guidance on Interests is available from the Standards Board. The following is a summary for ease of reference.

The 2007 National Model Code refers to “personal” and “prejudicial” interests and to certain special categories of interests including

- Gifts and hospitality;
- The business of Overview & Scrutiny Committee meetings;
- The business of the Executive or Cabinet;
- Sensitive information

Registration of interests: The Local Government Act 2000 and the 2007 Model Code provide rules for the registration and disclosure of Members’ interests. Guidance on these rules is provided by the Standards Boards and advice may be sought by Members from their local authority’s monitoring officer. It is recommended that Members regularly review their situation in consideration of these rules.

A register of interests will be maintained by a local authority’s monitoring officers and will be open to public inspection.

A Member must provide the monitoring officer with written details of relevant interest within 28 days of his/her election to office. Any changes to his/her interests must be notified within 28 days of the Member becoming aware of the changes.

Personal interests: There are two types. A Member has a personal interest in any business of his/ her authority where it relates to or is likely to affect:

- An interest which must be registered;
- An interest which does not require to be registered, but where the wellbeing or financial position of the Member, his/ her family, or people with whom he/ she has a close association, is likely to be affected by the business of the authority more than it would affect the majority of inhabitants of the ward/ electoral division/ authority’s area affected by the decision.

A Member declaring a personal interest may remain in the meeting and speak and vote on the matter, unless that interest is also a prejudicial interest (see below)

Members must declare that they have a personal interest, and the nature of the interest, before the matter is discussed or as soon as it becomes apparent (except in certain limited circumstances which the Code explains). Even if the interest is registered, the Member must declare it in meetings where matters relating to that interest are discussed, unless an exemption applies.

Prejudicial interests: A personal interest will also be a prejudicial interest if all of the following apply:

- The matter does not fall within one of the exempt categories of decisions;
- The matter affects the Member’s financial interests or relates to a licensing or regulatory matter; and

- A member of the public, knowing the relevant facts, would reasonably think that the Member's personal interest was so significant that it would be likely to prejudice his/her judgement of the public interest.

A Member having a prejudicial interest in a matter being discussed at a meeting must declare it, and the nature of it, as soon as that interest becomes apparent to the Member. The Member should then leave the room, unless members of the public are allowed to make representations, give evidence or answer questions about the matter by statutory right or otherwise. If that is the case, the Member may also attend the meeting for that purpose. The Member must, however, immediately leave the room once he/ she has finished speaking or when the meeting decides that the Member has finished. The Member must not remain in the public gallery to observe the vote on the matter. Additionally, a Member must not seek to improperly influence a decision on a matter in which the Member has a prejudicial interest.

The National Model Code of Conduct states that where a Member has such an interest s/he should not take part in any discussions about that interest, unless a dispensation¹ has been obtained from the authority's standards committee. S/he must declare what the interest is and withdraw from the meeting by leaving the room (see also *R (Richardson and Another) v North Yorkshire County Council and another [2003] EWCA Civ 1860*).

Prejudicial interests – licensing or other regulatory matters: LACORS draws Members' attention particularly to the Guidance of the Standards Board on the 2007 Code relating to licensing/ regulatory matters and to situations in which Members have a statutory right to speak.

As an example of a licensing or regulatory matter which would give rise to a prejudicial interest, the Guidance refers to a situation in which a Member of a Licensing Committee might be considering a Licensing application made by him/ her or a body on his/ her register of interests.

Prejudicial interests – significant matters likely to prejudice judgement of the public interest: where a reasonable member of the public knowing all the relevant facts would think that a Member's ability to judge the public interest objectively might be prejudiced, then the Member has a prejudicial interest. The Standards Board guidance offers an example of such a situation from the planning context which, LACORS feels, would apply equally in the Licensing Act 2003 context.: a Member would have a prejudicial interest in a Licensing Act 2003 application if a member of his/ her family lived next to the premises concerned. The existence of the close family tie means that a reasonable member of the public might think that it would prejudice the Member's view of the public interest when considering the licensing application.

Effect of a prejudicial interest: IN AN IMPORTANT CHANGE FROM THE 2001 CODE, THE NEW MODEL CODE SUPPORTS AND RECOGNISES MEMBERS' ROLES AS COMMUNITY ADVOCATES AND ENABLES MEMBERS TO REPRESENT THEIR COMMUNITIES AND SPEAK IN CERTAIN CIRCUMSTANCES EVEN WHERE THERE IS A PREJUDICIAL INTEREST.

Again, LACORS refers Members to the Guidance of the Standards Board and encourages Members to seek the advice of their Monitoring Officer if the situation appears to be unclear.

¹ NB. Dispensations are not possible for members of a Council's Executive.

Although generally the new Code does not provide a right to speak to a meeting where a prejudicial interest exists, the Licensing Act 2003 regime does now provide a statutory right to speak at Licensing Hearings, which is recognised by the Code.

Licensing examples of personal & prejudicial interests: *The key question is “what are to be regarded as personal and prejudicial interests, in terms of the Licensing Act 2003?” It should be recalled that personal interests include those which affect the well-being or financial position of the Member. Examples of personal and prejudicial interests might include situations in which the Member (or their friend, family or employer):*

- *lives very near to the premises in question (likely to have a personal interest and potentially a prejudicial interest);*
- *is a frequent visitor to the premises in a personal capacity (potentially a personal and a prejudicial interest);*
- *belongs to a lobby or campaign group which may be directly impacted by the outcome of the Licensing Committee hearing (personal and potentially prejudicial interest).*

Gifts and hospitality: Members should be very cautious about accepting gifts or hospitality. Members are required by the National Model Code of Conduct to provide written notification of receipt of any gift/hospitality worth greater than £25, within 28 days, to the monitoring officer of the local authority. *To avoid potential perceptions of bias it may be appropriate that generally any gifts or offers are unacceptable. It is recognised that this is more stringent than the National Model Code of Conduct. However, in particular circumstances where a gift or offer is accepted e.g. free drinks, meals, admission to events etc. then local authorities may wish to follow a procedure whereby the details are registered and stored for example, on the licence file.*

Exemptions to the rules on personal and prejudicial interests

Exemption as to personal interests: Where a Member's personal interest arises solely from his/ her membership of, or position of control/ management on

- Any other body to which the Member was appointed or nominated by the authority;
- Any other body exercising functions of a public nature (for example another local authority).

The 2007 Code states [para 9(2)] that in these cases, provided the Member does not also have a prejudicial interest, he/ she needs only to declare that interest if and when speaking on the matter.

Bodies exercising functions of a public nature: The Guidance of the Standards Board cites as examples: regional and local development agencies; other government agencies; other councils, public health bodies, council-owned companies exercising public functions; arms-length management organisations carrying out housing functions on behalf of the Member's authority; and school governing bodies.

Exemptions as to prejudicial interests: Para 10(2)(c) of the Code of Conduct 2007 states that a Member will not have a prejudicial interest if the matter relates to certain functions of their authority:

- Housing – the Member holds tenancy or lease with the authority, but the matter does not relate to his/ her particular tenancy or lease;
- School meals/ transport/ travelling expenses – the Member is a parent or guardian or a child in full-time education and is a parent governor, unless the matter relates to the particular school the Member's child attends;
- Statutory sick pay;
- An allowance/ payment/ indemnity for Members;
- A ceremonial honour given to Members;
- Setting Council tax or a precept.

In respect of the Licensing Act 2003 the situation may occur where a Member carries-out a function for another public authority or another local authority which is making an application for a licence, or which is making a representation. For example, if the local hospital or school is applying for a premises licence and the Member is on the Board of Governors of the school or involved in the management of the hospital. It may also occur where the Member is a 'dual-hatted' Member and is part of the District Council's Licensing Committee but also a Member of the County Council which is applying for a premises licence for its land.

In such situations, whilst there would be a personal interest which could be exempt from declaration, the added dimension of the public function vis-à-vis the other public bodies which the Member also serves, would mean that this was also a prejudicial interest. It is strongly suggested that Members consider NOT availing themselves of any exemption in such circumstances as to do so may put the local authority at risk of being accused of bias.

The Standards Board has previously commented that "...you should not sit on decision-making bodies, such as planning and licensing committees, when they decide applications from an authority on which you also serve. Even though these situations fall within the scope of those

exempt from declaration], a reasonable member of the public would think that your judgment is likely to be prejudiced. In addition, a legal challenge could be made against the authority's decision-making process if you participate in these circumstances." ("Lobby groups, dual-hatted members and the Code of Conduct – Guidance for Members" The Standards Board for England September 2004 p.15).

The Standards Board has also stated "Regulatory matters such as planning and licensing, are particularly sensitive... In our view, you should adopt a particularly cautious approach to planning and licensing matters."("Lobby groups, dual-hatted members and the Code of Conduct – Guidance for Members" The Standards Board for England September 2004 p.6).

'Advantages' available to Members

Under the National Model Code a Member with a personal and prejudicial interest shall also not "improperly influence a decision about that matter". What this means is that a Member must not use any advantage available to them as a Member which would include, for example, access to Officers and other council Members. Sections of the new Code relating to "Compromising the impartiality of officers of the authority [para 3(2)(d)]; improper use of position [para 6(a)]; use of the authority's resources [para 6(b)(i)]; and using resources for proper purposes only [para 6(b)(ii) and 6(c)] would also apply.

In respect of the Licensing Act 2003 Section B5 Lobbying of/ by Councillors should be referred to. The Member should not have access to papers and persons which would not be available to an ordinary member of the public, and must not be able to address or view the proceedings of the Licensing Sub-Committee, which are not available to members of the public.

The Standards Board for England published in September 2004 a guide, entitled "Lobby groups, dual-hatted members and the Code of Conduct", which Licensing Members and Officers should have regard to.

3. Licensing Sub-Committees - Bias and Predetermination

(a) Introduction

Bias has been defined as “an attitude of mind which prevents the [decision-maker] from making an objective determination of the issues that he has to resolve” (*Re Medicaments and Related Classes of Goods No. 2 [2001] 1 W.L.R. 727*). As mentioned in section A3 (Natural Justice – rules of the English Common Law), the important concept as regards bias is that there is no need for proof of actual or potential bias for there to be ‘procedural impropriety’ shown. It is sufficient that there is an appearance of bias. Accordingly, the test for bias is ‘whether a fair-minded and informed observer, having considered the facts would conclude that there was a real possibility of bias’¹.

Further, where the decision to be made is quasi-judicial, as at Licensing Sub-Committees, the key issue to ensure the legality of the decision is the “public perception of a probability of unconscious bias”². This brings into consideration the previous dealings of members of the Licensing Sub-Committee and views expressed by them. ***Members should therefore avoid participating as a member of a Licensing Sub-Committee where previous voting or statements of belief may alter that “objective impression conveyed”***³. The Standards Board for England’s advice also states “You should not reach a final conclusion before you come to take a decision on an issue” and that “Your statements and activities should not create the impression you’re your views on a matter are fixed, and that you will not fairly consider the evidence or arguments presented to you when you are making a decision”. (“Lobby groups, dual-hatted members and the Code of Conduct – Guidance for Members” The Standards Board for England September 2004) The sections on Gifts & Interests and Lobbying are particularly relevant in this regard.

‘Bias’ also includes the situation where it is felt that the decision-maker has pre-determined the case based upon his/her own prejudices.⁴ In the local government context, the most obvious example of pre-determination is where the impression is clearly given to persons (such as members of the public or a lobbyist) beyond conveying a mere pre-disposition, that ‘the Member or authority will approach the matter with a closed mind and without impartial consideration of all relevant issues’⁵

To help avoid accusations of pre-determination and ensure that Ward Members are free to represent their constituents as ‘interested parties,’ it may be advisable for local Licensing Authorities to consider that Ward Members do not sit on Licensing Sub-Committees where that Committee is considering an application in that Member’s Ward.

(b) ‘Structural’ Bias

A potential issue concerning bias or pre-determination in relation to the Licensing Act 2003, is where a Member sitting on the Licensing Sub-Committee is a Member for another authority function such as economic development / regeneration, where that function’s policy / decisions either impliedly or explicitly support (or indeed, opposes) the application. This might, for example, include the scenario where an ‘Open Spaces’

¹ *Porter v. Magill [2002] 2 AC 357 at 494 [103]*

² *Lawal v Northern Spirit Ltd [2003] UKHL 35*

³ *Costas Georgiou v Enfield LBC [2004] EWHC 779 (admin) QBD*

⁴ For discussion of this see *Locabail UK v Bayfield Properties (2000)*

⁵ *Costas Georgiou v Enfield LBC [2004] EWHC 779 (admin) QBD*

plan has been agreed and indicates that some areas of the local authority land will be licensed for entertainment purposes under the Licensing Act 2003 (explicit support); or where an economic regeneration plan includes the provision to encourage more theatres and restaurants to an area (implicit support).

In this regard, judicial discussion has noted that there is a difference between pre-determination and a pre-disposition arising from structural or political bias.¹ And it has been stated that “...there is a degree of permissible structural bias built into the statutory framework for local authority decision-making” Cummins v Camden LBA and SSTER [2001] EWHC Admin 1116 at para. 261. However, there is a crucial distinction between party political policy or structural matters, involving Members in a wider policy setting context, and where a Member has acted as an advocate for or against a licence application via their actions in another forum of the local authority or public body. The latter may well give rise to the perception that s/he has pre-judged the issue or having introduced a real possibility of bias.

Local authorities may wish to agree procedures to cover such situations and advise that the Member concerned makes a disclosure of his/her position, in advance, to the Licensing Sub-Committee which will consult with the Sub-Committee’s legal advisor to decide if the Member can take part in the decision-making. Licensing Authorities may wish to be cautious and where there is doubt, decide to exclude the Member from the decision making. A useful case to note on this point is the planning case of Costas Georgiou v Enfield LBC [2004].

As mentioned previously, it should be noted that the Standards Board for England has advised that “Regulatory matters such as planning and licensing, are particularly sensitive... In our view, you should adopt a particularly cautious approach to planning and licensing matters.” (“Lobby groups, dual-hatted members and the Code of Conduct – Guidance for Members” The Standards Board for England September 2004 p.16)

Potential ‘structural bias’ may also be perceived where the Licensing Policy Statement includes provision that the local authority intends to licence its land and the Member took part in the Council meeting which approved the policy statement (e.g. Full Council meeting). In such a situation Members would NOT normally be excluded from the Licensing Sub-Committee on this basis as it would make the decision-making process unworkable. The only exception would be where the Member involved could reasonably be seen as having been a leading or particular advocate for or against the proposal.

(c) Difference between the Personal / Prejudicial Interests provisions of the National Model Code of Conduct, and Bias at Common Law

Bias at common law and personal and prejudicial interests under the National Model Code of Conduct are related but do differ as concepts and in their effect. Although the wording and

¹ As referred to in Bovis Homes Ltd v. New Forest DC [2002] EWHC 483 (Admin) it was stated in Cummins v Camden LBA and SSTER [2001] EWHC Admin 1116 at para. 261 ¹that “There is an important distinction between bias from a personal interest and a predisposition, short of predetermination, arising say from prior consideration of the issues or some aspect of a proposal. The decision-making structure, the nature of the functions and the democratic political accountability of Councillors permit, indeed must recognise, the legitimate potential for predisposition towards a particular decision. The source of the potential bias has to be a personal interest for it to be objectionable in law.” For further case law on this area see Cummins v. Camden LBC and SSTER [2001] EWHC Admin 1116, R v. SSE ex p. Kirkstall Valley Campaign Ltd [1996] 3 All E.R. 304 and R v. Amber Valley DC, ex p. Jackson [1984] 3 All E.R. 501 and Costas Georgiou v Enfield LBC [2004] EWHC 779 (admin)

apparent objectives are similar, the test for common law bias has a lower threshold. Bias at common law includes those areas where the potential Licensing Sub-Committee Member has created a real danger of a perception that s/he has prevented him or herself from being able to make an impartial determination of the issues. This is also known as fettering one's discretion. Interests under the National Model Code of Conduct, however, only concern themselves with the definition of a personal interest under the National Model Code of Conduct, first, and only then is the test as to whether or not that personal interest may be prejudicial then applied.

In terms of effects, a Member who has a personal and prejudicial interest may not take part in the Licensing Sub-Committee or attend the hearing at all. Whereas, a Member who has fettered his/her discretion through common-law bias may not sit as part of the Licensing Sub-Committee but may act on behalf of (or as) an 'interested party'.

Members should also be made aware that, because personal and prejudicial interests under the National Model Code of Conduct are concerned with acting in the wider public interest, matters may be caught as a personal and prejudicial interest under the National Model Code of Conduct which would not be considered to amount to bias under the common law.

For the Licensing Authority, bias may vitiate its decision on an application. Personal and prejudicial interests, in contrast, are ostensibly a matter for the Member concerned to disclose, act upon and take responsibility for. It must be recognised, however, that knowledge of the potentially undisclosed personal and prejudicial interest may be such that it would be irrational for the Authority or Sub-Committee to continue without taking action in response to it, and may therefore in turn, vitiate the Licensing Authority's decision.¹

¹ *R (Richardson and another) v North Yorkshire CC and another* [2003] EWCA Civ. 1860

4. Applications submitted by the Local Authority

Local authorities may apply for their own Premises Licences so as to licence areas of public space. Indeed the Government's Guidance encourages this:

3.59 "To ensure cultural diversity thrives, local authorities should consider establishing a policy of seeking premises licences from the licensing authority for public spaces within the community in their own name. This could include for example, village greens, market squares, promenades, community halls, local authority owned art centres and similar public areas."

Such applications must be, and seen to be, dealt with fairly. During such an application process it is therefore important to be aware of any potential appearance of bias. The discussions in the preceding sections should be considered in this respect. *It might also be worth considering whether such applications are always decided by the Licensing Committee and not the Licensing Officer, even where there are no representations, to minimise any potential appearance of bias.*

5. Lobbying of/ by Councillors

Local democracy: The Licensing Act 2003 sets out the grounds for making representations on licence applications and specifies the parties which may make such representations. It should be borne in mind that one of the key aims of the Licensing Act 2003 is to localise decision-making or 'democratise' the process and Members are therefore legitimately concerned with their locality and the needs/wishes of its constituents, including both the needs for entertainment and employment, as well as the undesirability of crime and public nuisance. Local Councillors can either sit as part of the Licensing Committee or can represent the interests of their constituents by acting as 'interested parties', as long as they do not have any prejudicial interest in the matter (see Licensing Act Section 13(3) and Guidance at 8.5).

Note: Since January 2010, councillors are regarded as interested parties in their own right. They are entitled to make representations or call for reviews in respect of any licensed premises in any ward within the council's area. They do not have to await instructions from residents or other organisations, but can act on their own initiative. (Note: members of councils that are not licensing authorities are not included within this definition. A small minority of councils will be affected by this; the majority are licensing authorities.)

It is important to note that representations submitted by councillors must be "relevant representations"; i.e. they must be concerned with the likely effect of the grant of the premises licence on the promotion of the licensing objectives, and must be made within the 28 day period during which representations may be made to the licensing authority; and they must not be frivolous or vexatious.

The National Model Code of Conduct: Membership of lobby / campaign groups should be included on the register of interests and then if the matter to be decided at a licensing hearing relates to the Member's membership of a lobby or campaign group, a personal (and potentially, a prejudicial) interest should be declared. This might, for example, include a situation where the Member is part of a campaign group which promotes rural pubs and the licence application requests a licence for such a premises. Whilst the National Model Code of Conduct does not require the Member to withdraw from the meeting unless there is also a prejudicial interest,

local authorities may wish to decide that in such a situation the Member does not sit so as to avoid perceptions of bias, especially as the Sub-Committee is made-up of no more than 3 Members. However, this would not preclude the Member attending the meeting either as the licence applicant, or being / representing an 'interested party'.

Clearly, if the interest is also a prejudicial one then the Member must not be present in the meeting in any form. Should s/he be the licence applicant or be / represent an 'interested party' then an agent should be utilised at the meeting instead, to present the Member's views.

It should be noted that the Standards Board for England has advised that "Regulatory matters such as planning and licensing, are particularly sensitive... In our view, you should adopt a particularly cautious approach to planning and licensing matters." ("Lobby groups, dual-hatted members and the Code of Conduct – Guidance for Members" The Standards Board for England September 2004)

Appearance of bias: Whilst lobbying of Members is legitimate and certain Members may make representations to the Licensing Committee on behalf of 'interested parties', it is crucial for the Licensing Authority and its Committee to ensure that there is neither actual nor an appearance of bias in its decision-making. It should also be remembered that concerns about political lobbying were the basis of the concerns which lead to the first Nolan Committee on Standards in Public Life.

To avoid an appearance of bias the following advice can be directed at Members:

- *No Member sitting on the Licensing Sub-Committee can represent one of the interested parties or the applicant. If s/he wishes to do so s/he must excuse him/herself from membership of the Sub-Committee which is considering the application and address the Sub-Committee as an 'interested party'.*
- *If a Member who sits on the Licensing Sub-Committee is approached by persons wishing to lobby him/her as regards the licence application then that Member must politely explain that they cannot discuss the matter and refer the lobbyist to his/her Ward Member or the Licensing Officer who can explain the process of decision making. If the Member who sits on the Licensing Sub-Committee wishes to represent them then s/he will need to excuse him/herself from the Licensing Sub-Committee.*
- *Members who are part of the Licensing Sub-Committee must avoid expressing personal opinions prior to Licensing Sub-Committee decision. To do so will indicate that the Member has made up his/her mind before hearing all the evidence and that their decision may not be based upon the Licensing Objectives nor the Licensing Authority's Statement of Licensing Policy.*
- *Political group meetings should never be used to decide how any Members on the Licensing Sub-Committee should vote. The view of the Ombudsman is that using political whips in this manner may well amount to findings of maladministration. It may be advisable that the Chair of the Licensing Sub-Committee should state, during proceedings, that no member of the Sub-Committee is bound by any party whip.*

- *Councillors must not be members of the Licensing Sub-Committee if they are involved in campaigning on the particular application.*
- *Other Members (i.e. those who do not sit on the Licensing Sub-Committee) need to be careful when discussing issues relating to matters which may come before the Licensing Sub-Committee Members as this can easily be viewed as bias / pressure and may well open that Sub-Committee Member to accusations of such. Whilst a full prohibition upon discussing such issues with Committee Members by other Members may be impractical and undemocratic, local authorities are advised to produce local guidance for Members on how such matters can be dealt with.¹ Such guidance could include a definition of what is viewed as excessive e.g. attempting to obtain a commitment as to how the Member might vote.*
- *Members must not pressurise Licensing Officers to make any particular decisions or recommendations as regards applications (such as the ability to decide whether an application is frivolous or vexatious as per Section 18(7)(c)).*

It should be noted that a Member for a Ward, which would be directly affected by the application, is most at risk to being accused of bias. Such Members are also most likely to be put under pressure to represent local 'interested parties' (ie objectors/supporters) or indeed 'responsible authorities' as regards a licence application. It is for this reason that, whilst there are no statutory requirements for Ward Members to excuse themselves from such licence application Sub-Committees (unless they have a prejudicial interest), local authorities may find it helpful to include in procedures that Members whose Ward includes the application, or whose Ward is likely to be affected by the application, are advised to not sit on the Licensing Sub-Committee considering the application but that s/he may wish to act as / or represent an 'interested party', or may wish to act in their capacity as an interested party in their own right.

¹ "It is undemocratic and impractical to try to prevent councillors from discussing applications with whomever they want: Local democracy depends on councillors being available to people who want to speak to them. The likely outcome of a prohibition would be that lobbying would continue but in an underhand and covert way." (Nolan Committee Report into Standards in Public Life 285 p. 72)

6. Pre-application/ pre-decision discussions

Discussions between the licence applicant and the Licensing Authority prior to the submission of an application (or prior to a decision being made) are often helpful to both parties. For example, a premises licence applicant may ask for advice on how to complete an 'operating schedule'. However, these discussions can often be viewed by objectors as a form of 'lobbying' and the Licensing Authority must ensure it is not open to accusations or / appearance of bias. ***The Licensing Authority must therefore ensure that such advice and assistance is clearly identified as being such and is not any type of 'predetermination'.***

Bearing in mind the available resources, some suggestions on how this can be achieved by the Licensing Authority are:

- ***Ensure that there are clear guidelines on how such pre-application / pre-decision discussions should take place, for both applicants, Members and Officers.*** This may include advice to applicants that they should not approach Licensing Sub-Committee Members to engage them in pre-application / pre-decision discussions, and that all queries should be addressed to the Licensing Officer (or an officer of any local authority 'responsible authority') in the first instance.
- ***Licensing Committee Members should ensure that they do NOT take part in any pre-application / pre-decision discussions and that applicants are referred to the Licensing Officer.***
- ***Ensure to keep full meeting notes on file*** where the meeting / telephone conversation / e-mail communication is contentious (precise arrangements for the necessity to keep meeting notes should be decided by each local Licensing Authority) and follow-up letters can also be useful to confirm the nature and content of the meeting which took place.
- ***Make clear that the discussions do not bind the Licensing Authority*** to any particular decision and when suggestions are made that these are provisional only.
- ***Advice must be consistent with the Licensing Objectives and the Licensing Authorities Statement of Licensing Policy.***
- ***Make clear the limited decision making power of the Licensing Officer.***
- ***Advice must be impartial.***

7. Role of the Licensing Officer

Licensing Officers have no ability under the Licensing Act 2003 to make representations or to be a party to the hearing. ***There is no legal provision for Licensing Officers to make recommendations to the Sub-Committee in terms of the outcome of the Committee hearing as is seen in planning cases.*** However, a summary report of the application, the representations, and the Officer's comments as to how these relate to the Licensing Act 2003, the Guidance and the local Licensing Policy Statement may be useful.

Each local authority would be advised to set-out clearly the role of its Licensing Officer(s) in the decision process covering topics such as pre-application / pre-decision discussions, site visits etc.

8. Decision making

Reasons for decisions made must be clearly documented so that any subsequent accusations of bias etc. can be defended. It is critical that it is clear that decisions are made according to the Licensing Objectives of the Licensing Act 2003 as well as the Licensing Authority's Licensing Policy Statement. Whilst the Government's Guidance accompanying the Licensing Act 2003 indicates some other factors which may influence decisions (e.g. live music / cultural considerations) these will always be subservient to the Licensing Objectives and the Licensing Policy Statement.

9. Site visits

Site visits by Licensing Sub-Committee members are generally unnecessary and can put the Members and the Licensing Authority at risk of accusations of bias. If a Licensing Authority believes that there might be occasions where visits are required then it would be advised to have set-out the reasons why this might be the case in local guidance, so that there are clear criteria for justifying any visit, which can be documented. Licensing Authorities would also be advised to have clear guidance as to how the visits are conducted.

10. Complaints Systems & Record keeping

Licensing Authorities may wish to review their complaints records procedures to ensure that they fully cater for the new functions under the Licensing Act 2003.

The Ombudsman has provided advice on the setting up of a complaints system entitled "Running a Complaints System" (<http://www.lgo.org.uk/guidance.htm>).

Generally, a complaints system, with regard to the licensing function, should ensure that:

- Record keeping is complete and accurate to ensure that complaints can be fully investigated.
- Full and comprehensive files are maintained throughout the life of the licence.
- It should be possible for someone not involved in the application process to understand what the decisions were and why and how reached, by reading the file. Particular care to be taken when a decision has been delegated to the Officer level.

Local record keeping procedures for the Licensing Act 2003 functions need to be devised and *any decisions of the Licensing Officer as regards applications deemed frivolous or vexatious must be recorded clearly with full reasons provided.*

REFERENCES & WEBSITE LINKS

DETR (subsequently ODPM, DCLG and now CLG) "New council constitutions: guidance pack / Modular constitutions for English local authorities": http://www.odpm.gov.uk/stellent/groups/odpm_localgov/documents/page/odpm_locgov_605660.hcsp

Good Practice Note No 1 - 'Devising a Complaints System'" <http://www.lgo.org.uk/guidance.htm>

LACORS <http://www.lacors.gov.uk>

LGA <http://www.lga.gov.uk/>

Local Government Ombudsman: <http://www.lgo.org.uk>

National Model Code of Conduct:

<http://www.standardsboard.gov.uk/TheCodeofConduct/Guidance/filedownload,5982,en.pdf>

Nolan Committee Reports: <http://www.public-standards.gov.uk/reports/index.htm>

The Standards Board - <http://www.standardsboard.gov.uk>

CASE LIST

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Cooper v Wandsworth Board of Works (1863)

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