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23 June 2023

To: All Members of the Standards Committee

Dear Member,

Standards Committee - Tuesday, 27th June, 2023

I attach a copy of the following reports for the above-mentioned meeting which were not available at the time of collation of the agenda:

9. LICENSING PROTOCOL (PAGES 1 - 28)

To consider recommendations from the Licensing Committee on changes to the Licensing protocol.

11. NO FURTHER ACTION CODE OF CONDUCT COMPLAINTS - MONITORING OFFICER ANNUAL REPORT: (PAGES 29 - 34)

16. EXEMPT NO FURTHER ACTION CODE OF CONDUCT COMPLAINTS - MONITORING OFFICER ANNUAL REPORT (PAGES 35 - 40)

To consider exempt information relating to item 11.

Yours sincerely

Ayshe Simsek,
Democratic Services and Scrutiny Manager
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LATE BUSINESS SHEET

Report Title: Agenda Item 9 – Licensing Protocol

Committee: Standards Committee

Date: 27 June 2023

Reason for lateness and reason for consideration

The Standards Committee has been asked to consider a report on the new Licensing Protocol which has been published and is attached item 9. The Committee are now further asked to consider an addendum which contains the minutes of the Licensing Committee held on the 22nd of June which considered this Protocol as the parent committee and put forward some minor changes which are attached at appendix 1 of the addendum. This addendum seeks onward recommendations for adoption of the Protocol by the Full Council on 17 July 2023, with the changes outlined in appendix 1 and 1.1.

The Protocol will be added to the Constitution and needs the agreement of the Standards Committee in line with their terms of reference requirement of considering amendments to the Constitution and recommending proposals to the full Council for approval.

Under s100B(4)(b) of the Local Government Act 1972, the Chair of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency by reason of special circumstances. These circumstances are so that the proposal, including the comments of the Licensing Committee which met on the 22nd of June, can be considered by the Standards Committee in a timely manner at the meeting on the 27th of June 2023 and if approved can progress to the next Full Council on the 17th of July 2023. This will allow the protocol to be added to the Constitution and allow clarity and understanding on the process for holding online Licensing subcommittee hearings. This was agreed as a late paper due to these circumstances by the Chair on the 19th of June 2023

Addendum

FILMING AT MEETINGS

The Chair referred to the filming of meetings and this information was noted.

2. APOLOGIES

Apologies had been received from Councillor Peacock, Councillor Blake, Councillor Bartlett and Councillor da Costa.

3. URGENT BUSINESS

It being a special meeting, under Part 4, Section B, Paragraph 17, of the Council's Constitution, no other business shall be considered at the meeting.

4. DECLARATIONS OF INTEREST

None were declared.

5. DEPUTATIONS / PETITIONS / PRESENTATIONS / QUESTIONS

It being a special meeting, under Part 4, Section B, Paragraph 17, of the Council's Constitution, no other business shall be considered at the meeting.

6. CHANGES TO THE PROTOCOL FOR LICENSING SUB-COMMITTEES

Ms Michelle Williams, Principal Litigation Lawyer and Ms Daliah Barrett, Licensing Team Leader, presented the item.

The Committee discussed the protocol rules and heard that:

- Rule 29 partly referred to a facility to submit information confidentially to the to the Council. It would be expected that the party communicating the confidential information to also send the Council a copy of the document that was unredacted so that the confidential information could be inspected in addition to the redacted copy. It would be for the Council to decide whether or not the information was actually confidential. The rule was mainly there to deal with the main confidential information that the Council were provided with; the names and addresses of interested parties possibly opposing an application. The information could only be kept truly confidential if there was a threat to those individuals if their details were disclosed. If there was no threat, it may be that the information would have to be shared with the other parties, although the other parties would be asked to keep their information confidential. It was the legislation which set out the ground

rules in terms of whether, particularly in terms of names and addresses, if they could be kept confidential. The legislation stated that if there was a threat, a reason would need to be substantiated to determine if there was a threat to the individual.

- An individual wanting to complain about a licenced premises was able to do so and there was a mechanism within the Council for it to even be an anonymous complaint. In terms of the Licencing legislation itself, the Licensing Authority could not accept a representation on an application where the representor had not provided their name and address.
- If allegations were being made, the applicant or licence holder had the right to know the case against them. In terms of licencing regulations, those making representations no longer were subject to a proximity test whereby they had to live within a certain radius of the locality. An applicant had a right to know if someone complaining about a premises how far the objector lived away from the premises (unless there was a substantiated threat).
- Rule 29 would be changed to read that any party submitting their information could make a request for certain details to be kept confidential so it was somewhat clear that the determination on whether or not certain information was kept confidential would ultimately be made by the Licensing Authority (or the Council).
- Pages 32 and 33 of the agenda papers relating to Licensing hearings and Gambling hearings appeared to have different procedures for applicants. The protocol in relation to Licensing hearings appeared to suggest that in most cases, a further opportunity would be provided for the applicant or licence holder to attend another hearing if they were absent from the meeting, but the protocol in relation to hearings relating to the Gambling Act appeared to suggest that the hearing would proceed in the absence of the applicant or licence holder. This would be changed so that both protocols were consistent.
- In relation to Rule 49, other local authorities operated some sort of a five-minute time limit to present freely at a Licensing Sub-Committee. If the speaking party presented justified reasons why they needed more than five minutes, the Chair had the discretion to extend the time. Participants speaking at length could result in a meeting that could not be concluded, partly due to the 10:00pm meeting guillotine operated by the Council. The parties also had time to make concluding remarks which were not timed. There previously had been no time limits on speaking whatsoever. In the event of an application which had many representations, those meetings could be lengthy and may not be conclude by 10:00pm.
- It was important to note that the applicant would have submitted their application and the representations would have been put in writing, so participants would generally be summarising their position and the applicant would be addressing the representations that had been made. The hearings often had an ongoing dialogue between all parties throughout the meeting and the legislation required that parties to be allowed an equitable amount of time to present their case. Therefore, in a hearing, for example, where there were 10 objectors to one applicant,

the Chair could engage discretion to ensure that both sides were offered an opportunity to speak for an equitable period of time.

- Many applicants had legal representation and parties could ask in advance for additional time before the hearing via the Licensing Officer.
- The summary procedure rules had been amended to reflect that, in normal circumstances, the parties would be given five minutes to speak, so all of the parties would be aware of this in advance. If they required more time, than they would know that the Chair had the discretion to extend it, and this was a request that could be made.
- Under the legislation, any application that had not received objections could be dealt with by the Licencing Authority and must be granted. Where objections had been received and the applications could not be ameliorated, those applications would be put forward to be heard before the Licencing Sub-Committee.
- Rule 14 stated that a councillor could not take part in the decision relating to an application in their ward, not that they could not make representations against a particular application in their ward. This rule had been put in place in case of an allegation of an appearance of bias.
- Ward councillors could make a representation against a particular application in their ward or speak on behalf of residents who had submitted a representation who then may nominate a ward councillor to speak on their behalf, possibly as a substitute speaker.
- Rule 62 and 63 appeared to have a loophole whereby a hearing could theoretically conclude between the hours of 9:30pm and 10:00pm allowing a new hearing to also start between 9:30pm and 10:00pm. Therefore, Rule 62 would be extended to read that no new hearings would commence after 9:30pm.
- Appropriate wording would be added to Rule 67 to ensure that the sentencing was complete.

Rule 56 would be changed to read “The Chair shall be responsible for the orderly conduct of the hearing. If any Member or a party loses their connection during a remote hearing, the meeting will be adjourned until they are able to rejoin and any evidence or representation they have missed will be rerun”.

At this point in the proceedings, at 7:47pm, Councillor Diakides left the meeting room.

Subject to the changes outlined above, the Committee.

RESOLVED:

1. To agree the updated Licensing Protocol attached at Appendix 1 of the report.
2. To agree the updated Licensing Hearings Procedure Summary attached at Appendix 2 of the report.

3. To agree updated Licensing Hearings Review Procedure Summary attached at Appendix 3 of the report.
4. To agree the updated Gambling Act 2005 Hearings Procedure Summary attached at Appendix 4 of the report.
5. **To recommend the approval of the protocol to the Standards Committee on 27 June 2023 for their onward recommendation for adoption by the Full Council on 17 July 2023.**

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HARINGEY COUNCIL – LOCAL LICENSING PROCEDURE RULES FOR HEARINGS UNDER THE LICENSING ACT 2003 AND THE GAMBLING ACT 2005

A. Interpretation

- I. “Acts” means the Licensing Act 2003 and the Gambling Act 2005.

“Applicant” means a natural person or other legal entity making any application or initiating any procedure or giving any notice for any form of licence, certificate, consent or determination in accordance with the Acts.

“Application” means any type of application, procedure or notice for any form of licence, certificate, consent or determination for which provision is made under the Acts.

“Chair” means the Chair of the Licensing Committee or Licensing Sub-Committee determining the relevant application.

“Committee clerk” means the officer(s) instructed by the Head of Legal and Governance and Democratic Services to attend Licensing Sub-Committee meetings to take the minutes and assist with the proper running of the meetings.

“Council” means the Council of the London Borough of Haringey.

“Gambling hearing” means a hearing by a Sub-Committee to determine an application under the Gambling Act 2005.

“Hearing” means a Gambling hearing or a Licensing Hearing as appropriate to the application.

“Hearings Regulations” means The Licensing Act 2003 (Hearings) Regulations 2005 (S.I. 2005 no. 44) in relation to licensing hearings and The Gambling Act (Proceedings of Licensing Committees and Sub-Committees) (England and Wales) Regulations 2007 in relation to gambling hearings.

“Interested party” has the meaning prescribed in the Acts.

“Legal representative” means the officer(s) instructed by the Head of Legal and Governance to attend Licensing Sub-Committee meetings to advise on matters of law and procedure.

“Licensing hearing” means a hearing by a Sub-Committee to determine an application under the Licensing Act 2003 which can be held in person or remotely.

“Licensing Committee” means the Council’s statutory Licensing Committee under the Acts.

“Licensing representative” means the officer(s) instructed by the Assistant Director, Environment and Resident Experience to administer application procedures and to attend Licensing Sub-Committee meetings to advise on licensing matters and gambling matters.

“Licensing Service” means the Council department responsible for administering the Council’s functions under the Acts.

“Member” means Haringey Councillor appointed to serve as a Member of the Licensing Committee or a Licensing Sub-Committee as the context requires.

“Notice” means any notice made in accordance with the Acts, or Regulations made thereunder, in relation to an application.

“Objector” means each interested party, other person, responsible authority, other natural person or legal entity who/which has made a relevant representation or an objection or given any notice in relation to any application.

“Other person” has the meaning prescribed under the Licensing Act 2003 as amended.

“Party/Parties” means the applicant(s) and/or the objector(s) in relation to any particular application.

“Premises” means any premises, land, vessel, vehicle or moveable structure in respect of which an application is made.

“Relevant Representation” means any relevant representation made in accordance with the Acts, or Regulations made thereunder, in relation to an application.

“Responsible authority” has the meaning prescribed in the Acts.

“Sub-Committee” means a Licensing Sub-Committee to which the Licensing Committee of the Council has delegated powers to determine applications.

“Ward Councillor” means a Haringey Councillor representing a Ward within which are located any premises that are the subject of an application.

B. Scope and Application

2. These Rules apply to all applications and hearings made in accordance with the Acts, or Regulations made thereunder. These Rules should be read and interpreted in conjunction the Hearings Regulations and the Acts.
3. The Committee Procedure Rules contained in Part Four, Section B of the Constitution do not apply when the Licensing Sub-Committee is conducting a hearing except in so far as they relate to the appointment of Substitute Members (Rule 6).
4. All hearings will be held in person except for Licensing hearings which will be held remotely, unless the Chair of the Licensing Sub-Committee considers it in the interests of justice to hold the meeting in person e.g. if any of the parties do not have access to technology or would be disadvantaged if the hearing was held remotely.

C. Pre-Hearing Procedure

5. The Licensing Service will notify the relevant Ward Councillors of each application, notice or relevant representation relating to premises within their Ward within 2 working days of receiving such application, notice or relevant representation. This requirement is in addition to any requirement arising under the Hearings Regulations.
- 6.. The Licensing Service may seek to mediate between the parties to an application with a view to securing: -
 - (a) the withdrawal of any relevant representation or notice, or
 - (b) the agreement of the parties that a hearing is unnecessary.
7. If, in any case, the parties agree that a hearing is unnecessary, the Licensing representative, , shall decide whether the Council consider that a hearing is unnecessary to determine the application and shall give notice of that decision to the parties forthwith.
8. In any case where it has been decided that a hearing is necessary, the Sub-Committee shall consider the application_at a hearing in accordance with these Rules.
9. Subject to Rule 4, Licensing hearings will take place remotely via Microsoft Teams.
10. Prior to the remote hearing a link will be sent by the Committee Clerk to all parties to enable those parties to attend the virtual meeting.
11. The link will be posted on the Council's website to enable members of the public to observe the meeting, however they will not be allowed to speak at the meeting.

12. Parties may submit a written version of their oral representations by email at least 48 hours before the licensing hearing is due to start. Although voluntary, these written submissions will assist the Sub-Committee in the conduct of the hearing and decision making process.

13. Parties will be required to log in 10 minutes before the start of the meeting. The Committee Clerk can be contacted in case of technical difficulties and contact details will be provided to the parties.

D. Membership and Quorum for Hearings

14. Where an application relates to premises within a Ward, then a Ward Councillor shall not take part in the decision upon that application as a Member.

15. So far as practicable, hearings will be arranged so that the Sub-Committee determining the application does not include Members representing any Ward in which premises affected by the application are located.

16. A Councillor who has participated in a decision by the Council to make any application, or to support or assist an application made by another person, shall not participate in decision-making on the application in question as a Member of the relevant Sub-Committee.

17. The quorum for any hearing of a Sub-Committee shall be three Members.

18.

18. If any Member needs to leave during the hearing the Chair will adjourn the meeting until they return.

E. Attendance at Hearings

18A. Only applicants and Parties that have made a valid representation or their named representative/substitute or witness will be allowed by the Chair to speak at the hearing.

F. Non-Attendance at Hearings

19. Where a party has not notified the Council that he/she does not intend to attend or to be represented at a hearing, and that party fails to attend the hearing then the Sub-Committee may either: -

- (a) adjourn the hearing to a specified date where it considers this to be necessary in the public interest, or
- (b) hold the hearing in the party's absence.

20. Normally, a party who fails to attend a hearing in the circumstances described in Rule 19 above, will be allowed one further opportunity to attend the hearing adjourned to a specified date.
21. Where an adjournment is granted, the Licensing representative shall make every reasonable endeavour to contact the party who failed to attend by telephone or in person in order to warn them of the new date for the adjourned hearing and the likelihood that the application will be determined in that party's absence in the event of further failure to attend.

G. Calling Witnesses

22. Where a party wishes to call a witness to give evidence at a hearing that party must give written notice to the Licensing Service of this intention no later than ten working days before the date of the hearing stating: -
 - (a) the name of the witness, and
 - (b) a brief description of the point or points upon which the witness' evidence may assist the Sub-Committee in making its decision on the application.
23. Where a party has given notice under Rule 22, the Licensing Service shall forthwith communicate this notice to the other party/parties, if possible by electronic means or by the most rapid practicable alternative means.
24. Where a party has given notice under Rule 22, the Sub-Committee shall consider at the commencement of the hearing whether it will permit the party to call the witness for the purpose(s) notified. Such permission shall not be unreasonably withheld at a hearing where there has not been full compliance with Rule 22.

H. Documentary Evidence

25. Where a party wishes to rely upon documentary evidence at a hearing that party must give written notice to the Licensing Service of this intention no later than ten working days before the date of the hearing. This notice shall be accompanied by six copies for the Council and sufficient additional copies of all the relevant documentary evidence for each other party made known to the notifying party. Compliance with this Rule is especially important in relation to documents that are not easy to photocopy because, for example, they are coloured or not A4 size.
26. Where a party has given notice under Rule 25, the Licensing Service shall forthwith communicate all the relevant documentary evidence to the other party/parties if possible by electronic means or by the most rapid practicable alternative means.
27. Where a party has complied fully with Rule 25, that party shall have the right to have the relevant documentary evidence admitted and, subject to the provisions of the Hearings Regulations, the Sub-Committee shall take such evidence into account in making its decision.
28. In any case where a party wishes to rely upon documentary evidence but has not fully complied with Rule 25, then at the commencement of the hearing the Sub-Committee shall follow this procedure: -
 - (a) the Chair shall establish whether the other party/parties consent to the documentary evidence being admitted, and
 - (b) if all the other parties so consent, then the documentary evidence shall be treated as if Rule 27 applied to it, or
 - (c) if any party does not so consent, and the documentary evidence has only been made available to all the parties at the hearing, then the Sub-Committee shall generally refuse to admit it, or
 - (d) if any party does not so consent, and the documentary evidence has been made available to all the parties before the hearing but there has not been full compliance with Rule 25, then the Sub-Committee shall decide whether to admit the documentary evidence nonetheless, and
 - (e) in making its decision under Rule 28(d), the Sub-Committee shall have regard to any reasons given for the late production of the documentary evidence, or other non-compliance with Rule 25.
 - (f) in making its decision under Rule 28(d), the Sub-Committee shall consider how far any other party may be prejudiced by the late production of the documentary evidence, or other non-compliance with Rule 25, and also the extent of the prejudice to the party seeking to rely upon the evidence if its admission is refused.
 - (g) in making its decision under Rule 28(c) and/or 28(d), the Sub-Committee shall consider whether it would be desirable in the public interest to adjourn the hearing for any period of time, or to another date, in order to allow any other party a reasonable opportunity to consider the documentary evidence.

- (h) in making its decisions under Rules 28(d) and 28(g) above, the Sub-Committee shall consider any representations by the parties and the advice of its legal representative.
29. Where a party wishes to rely upon documentary evidence at a hearing but considers that any details of that evidence should be treated as confidential e.g. the name or address of the signatory of a letter, then the party may request that such details are redacted and the Licensing Authority will decide whether the information can be kept confidential or whether an application should be made under rule 30. Any notice given or relevant representation made to the Licensing Authority must state the originator's name and address in order for it to be valid.
 30. In any case where there is a request for confidential details to be excluded under Rule 29, the Licensing Service must be informed whether a request will be made by the party under Rule 37. If permission is refused under Rule 38, the whole or part of the relevant documentary evidence may be excluded from consideration. If permission is granted to exclude any confidential details, this may affect the weight to be given to the rest of the related evidence under Rule 55.
 31. Where a party wishes to rely upon a model, or any form of evidence that cannot be photocopied, at a hearing that party must give written notice to the Licensing Service of this intention no later than ten working days before the date of the hearing. The party seeking to rely upon such evidence shall indicate in the notice, so far as practicable, the nature of that evidence and the purpose(s) of producing it.
 32. Where a party has given notice under Rule 31 the Licensing Service shall forthwith communicate all relevant information about the evidence to the other party/parties if possible by electronic means or the most rapid practicable alternative means.
 33. Rules 25 to 28 shall be applied to evidence of the type described in Rule 31 with a presumption that such evidence will be admitted if it materially helps the Sub-Committee to understand relevant issues between the parties at the hearing.

I. Petitions

34. Petitions shall on each page state their purpose and contain a warning to potential signatories that they are liable to be made public and that a copy will be supplied to other parties to the application. Each person signing should print their name and address legibly. At the end a petition must state the name(s) and address(es) of the persons circulating the petition and the dates on which this took place.
35. A petition must comply with Rule 34 unless the Sub-Committee decide to waive compliance with any requirement(s) for a good reason. A petition shall also be treated as documentary evidence and Rules 25 to 28 shall apply.

J Private Hearings and Confidential Evidence

36. In accordance with the Hearings Regulations, hearings shall take place in public unless a decision to the contrary is made under Rule 38 in any case.
37. Where a party or a witness consider that any giving of evidence, or part of any evidence, or part of a hearing, should be held in private, then the party or their witness shall make such request to the Chair at the commencement of the hearing.
38. The Sub-Committee may decide to exclude members of the public from any part of a hearing and/or treat any evidence as confidential where the Sub-Committee consider that the public interest in preserving the confidentiality of any evidence outweighs the public interest in that part of the hearing taking place in public.
39. For the purposes of Rule 38, a party, a witness and any person assisting or representing a party, may be excluded from any part of a hearing or from hearing or seeing any particular evidence. Where the Sub-Committee decide to hold part of a hearing in private, a party and/or his/her representative shall only be excluded in exceptional circumstances.
40. Where the Sub-Committee decide to hold part of a hearing in private, the officers of the Licensing Service shall only be excluded in exceptional circumstances. The Committee Clerk and legal representative shall not be excluded.
41. Before making any decision under Rules 38 or 40, the Sub-Committee shall consider the advice of its legal representative.
42. Where any part of a hearing takes place in private, the hearing will be adjourned immediately thereafter for a period of time sufficient to enable the Committee clerk to prepare a fair summary of the evidence and proceedings heard in private. This summary will exclude all details that the Sub-Committee, acting with the advice of its legal representative, consider should remain confidential. Upon the resumption of the hearing, the summary will be read out publicly in the presence of all the parties.
43. Rules 36 to 42 shall apply as nearly as may be practicable to documentary evidence where, with the consent of the Sub-Committee, confidential details may be disclosed to the Sub-Committee but excluded from disclosure to the public or persons mentioned in Rule 39.
44. Rules 36 to 42 shall apply, as nearly as may be practicable, where a witness wishes to disclose his/her name and/or address or other details only to the Sub-Committee and Council officers but not to the public or persons mentioned in Rule 39.

45. Whenever any evidence or information has been treated as confidential under Rules 36 to 44, the Sub-Committee shall consider whether to alter the weight given to that evidence in accordance with Rule 55.

K. Commencement of the Hearing

46. At the commencement of each hearing the Sub-Committee shall follow this procedure but may omit or abridge any step or Rule as appropriate -
- (a) The Chair will introduce him/herself and invite the Members and officers to introduce themselves
 - (b) The Chair will invite the parties to introduce themselves and their representatives (if any)
 - (c) The Chair will invite Members to disclose any contacts they may have had before the hearing with the parties or lobbyists for them which do not constitute a personal, prejudicial or disclosable pecuniary interest in accordance (see the guidance contained in section Q).
 - (d) If any party fails to attend the hearing, the Sub-Committee shall decide whether to proceed with the hearing in the absence of that party or whether to adjourn the hearing to another date. The Sub-Committee shall have regard to Rules 19 and 20 and Regulations 12 and 20 of the Hearings Regulations in making such decisions.
 - (e) The Chair will explain the procedure to be followed by reference to these Rules and the Summary procedure for that hearing.
 - (f) The Chair will suggest the order of the topic headings for discussion at the hearing and will then invite the comments of the parties. In the light of such comments the Sub-Committee will confirm the order of the topic headings or amend them.
 - (g) The Chair will ascertain whether there are any requests by any of the parties to call a witness and the Sub-Committee will then determine any such request under Rule 24.
 - (h) The Chair will ascertain whether there is likely to be a request from any of the parties to cross-examine a witness called by another party and, if so, the reasons given for seeking a cross-examination. The Sub-Committee will then determine whether to allow such cross-examination in the interests of establishing relevant facts.
 - (i) The Chair will ascertain whether there are any requests by any of the parties to produce documentary evidence, including models etc., and whether there has been full compliance with Rules 25 to 32. In the event of any non-compliance these Rules, the Sub-Committee shall decide whether to admit the evidence and/or adjourn the hearing under Rules 28 to 33.
 - (j) The Chair will ascertain whether there are any requests by any of the parties to treat any evidence as confidential or to hear any of the evidence, or hold any part of the hearing, in private. If so, the Sub-Committee shall decide the request under Rules 38 to 44.
 - (k) In any case where the Licensing Service has informed a party that there are particular points on which the Sub-Committee will need clarification, the Chair will then invite the party to provide such clarification.

L. Procedure and Evidence at Hearing

47. For remote hearings all Members and parties must have their cameras on for the duration of the hearing.
48. All Members and parties should mute their microphones until invited to speak by the Chair and only one person should speak at any one time. If anyone wishes to speak during the hearing they should press the raise my hand button on the menu bar and wait to be called by the Chair.
49. In accordance with Hearings Regulations, the hearing shall take the form of a discussion led by the Chair. With permission of the Chair the other Members of the Sub-Committee may ask questions of the parties, their representatives and witnesses and may lead the discussion on specific topics or points. When making their initial representation, each representative/party will be given 5 minutes to address the Sub-Committee with the Chair having the discretion to extend this time limit if appropriate, e.g. if the application is complex.
50. The hearing shall follow the order of the topic headings determined under Rule 46 (f) unless there is a good reason to depart from this agreed by the Sub-Committee.
51. The Chair, or Member leading the discussion, shall endeavour to ensure that each party has a reasonable opportunity to explain their case under each topic heading. The parties, their representatives and witnesses have a duty to make their evidence and comments succinct and relevant to the issues under discussion.
52. A party shall not be permitted to cross-examine another party or their witness unless this has been allowed under Rule 46 (h). If a party has concerns relating to the evidence or comments of another party or their witness, this should be explained to the Sub-Committee so that the Chair can question the other party/witness about these concerns before completing that topic heading.
53. Where permission has been given to a party to call a witness, that witness may give evidence in one or more stages when the discussion covers the appropriate topic heading(s). Normally, a witness will be invited by the Chair to make a statement. The witness will then be subject to cross-examination by the other party/parties if this has been allowed under Rule 46 (h). Then the Sub-Committee may question the witness. A party shall not re-examine his/her own witness except with the consent of the Chair to clarify a significant point in earlier evidence.
54. At the end of each topic heading the Chair shall invite the Licensing Service or legal representative to make any comments that they may consider necessary. With the consent of the Chair, these officers may question parties or witnesses directly or put their questions through the Chair.

55. Strict legal rules of evidence shall not apply. However, in considering what weight to place on the evidence or comments of any party or witness, the Sub-Committee shall have regard to the extent to which information was: -
- (a) within a witness' direct knowledge, and
 - (b) clearly and specifically related to the points at issue in the hearing, and
 - (c) tested by questioning.
56. The Chair shall be responsible for the orderly conduct of the hearing. If any Member or a party loses their connection during a remote hearing, the meeting will be adjourned until they are able to rejoin and any evidence or representation they have missed will be rerun.
57. The Chair may require any person to be silent and if necessary may mute their microphone during a remote meeting. The Chair may regulate the order in which persons speak at the hearing. The Chair will endeavour to prevent remarks which are repetitious or irrelevant or which amount to unsubstantiated offensive allegations against any person, present or not.
58. After a warning the Chair may require any person at the hearing who is considered to be behaving in a disruptive manner to leave the meeting and may prohibit his/her return except on compliance with specified conditions. For a remote hearing the Chair may exclude a person from the hearing by muting their microphone or by removing them from the meeting. This can be for a period or for the remainder of the hearing. A person excluded from a hearing under this Rule may put in writing any information or submission they intended for the hearing. For a remote hearing this may be done by way of an e-mail to the Committee Clerk. The Sub-Committee must take any such information into account in reaching its decision.
- 59.. The Chair on his/her own motion may indicate the decision of the Sub-Committee on any procedural matter within the scope of these Rules notwithstanding that the decision is stated in these Rules to be that of the Sub-Committee. This is subject to the right of any Member, who makes an immediate request, to have the matter put to the vote of the Sub-Committee as a whole. Rules 69 will apply to such a vote.
60. In accordance with the Hearings Regulations, each party has the right to make a closing address to the Sub-Committee in order to summarise his/her case at the end of the hearing. Unless the applicant consents to a different order, the applicant shall have the right to make the final address.
61. Each party must be allowed an equal maximum period of time to make a closing address. Normally, the Chair will invite each party to state how much time that party will require. However, the Sub-Committee may fix a greater or lesser maximum time for each closing address provided that this is reasonable in relation to the weight and complexity of the issues at the hearing.

M. Time Limit for Hearings

62. At 9.30 p.m. the Chair must ask the Sub-Committee to agree –
 - (a) to continue the hearing in hand and, if necessary, to suspend these Rules so as to allow it to continue for a reasonably short time beyond 10.00 p.m. when this is necessary to complete the hearing and advisable in the interests of fairness, or
 - (b) to adjourn the hearing until a date to be fixed.
63. Hearings shall not normally continue later than 10.00 p.m. and no new hearing shall be commenced after 9.30 p.m.
64. To facilitate hearings concluding before 10.00 p.m. for all hearings the Chair may impose time limits for representations or closing addresses.

N. Decision Making

65. At the end of a hearing the Sub-Committee may confer publicly or in private and announce its decision on the application(s) immediately.
66. The decision(s) will be summarised in writing and the Sub-Committee will return to the public meeting so that the Committee clerk can read out the decision(s) in the presence of all the parties and their representatives.
67. The Sub Committee may give its decision at the end of the hearing. This is most likely where it relates to a TENS application, summary review or a hearing following a closure order.
68. Alternatively, the Sub-Committee may provide the decision in writing within 5 working days commencing with the day of the hearing.
69. In any case, and whether or not Rule 65 applies, the Sub-Committee may retire with the Committee clerk and legal representative to deliberate in private.
70. The Sub-Committee, if making a decision at that time, must reach their decision by a majority vote.
71. If the Sub-Committee require any clarification of matters of fact before reaching their decision(s), and the decision is being made immediately, the Sub-Committee shall return to the public meeting and put questions to the parties, their witnesses or the Licensing representative in the presence of all the parties and their representatives.
72. If the legal representative gives legal advice on any point(s) material to the Sub-Committee's decision(s), this advice will be summarised and read out by the

legal representative in public before the Committee Clerk reads out the decision(s).

O. Waivers and Irregularities

73. The Chair may agree to waive any of these Rules, including any time limit, in the case of any individual application where he/she considers that there is good reason to do so. Excepted from this power to waive are Rules 14 to 17 (inclusive). Any permanent variation of these Rules must be decided by the Licensing Committee.
74. Any irregularity arising from any failure to comply with any provision of these Rules before the Sub-Committee has made a determination shall not of itself render the proceedings void.
75. In any case of such an irregularity the Sub-Committee shall, if Members consider that any person may have been prejudiced as a result of the irregularity, take such steps as Members think fit to cure the irregularity before reaching a determination of the application(s). In any such case the Sub-Committee shall consult the legal representative before deciding upon any steps to cure the irregularity.
76. In any case where it appears after the Sub-Committee's determination that the decision has been vitiated by incorrect information or any procedural or legal error, the Legal Representative shall advise the Chair of this and of the steps necessary to remedy the problem. With the consent of the Chair, the Sub-Committee may reconvene to take the steps advised and/or to amend its decision. With the consent of the Chair in an appropriate case, the Members of the Sub-Committee may signify their consent to any steps advised and/or any amended decision without reconvening in person. When the legal representative so advises, the parties affected shall be invited to a reconvened hearing or, where appropriate, to signify their consent to any steps proposed without attending in person.

P. Councillors who are not Members of the Licensing Sub-Committee

77. A Councillor, who is not a Member of the Sub-Committee determining the application in question, may participate in the hearing but only if the Councillor is an objector who has made relevant representations in accordance with the Hearings Regulations and the Acts, or if the Councillor has been asked to attend by a party in order to act as a witness or a representative for that party.

Q. Cases Remitted by the Magistrates on Appeal

78. On an appeal to the Magistrates Court, the Court may remit the case to the Council for it to determine in accordance with the Direction of the Court. The Chair of the Licensing Committee on legal advice may wish the Council to contest that Direction by further legal proceedings. If not, the Chair will receive advice from the Head of Legal Services on how to comply with the Direction of the Court and will be requested to agree the appropriate

procedure. So far as possible, these Rules will apply to any further hearing with such modifications as are advised to secure compliance with the Direction of the Court.

R. Guidance: Councillors' Participation in Hearings and Members' Interests

1. It is the responsibility of individual Councillors to disclose any interest they may have when sitting as a Member of or participating in a Licensing Sub-Committee hearing.

The Council's Code of conduct for Members defines three categories of Members' interests:

- Disclosable pecuniary interests (DPI's)
- Prejudicial interests
- Personal interests

These are explained in detail at sections 4 to 6 and Appendix A of the Members' Code.

2. Whenever a Councillor, sits as a Member of the Sub-Committee, or intends to participate in a hearing in accordance with Rule 65, the Councillor must consider whether s/he has a personal interest or a prejudicial interest or a DPI and make any declaration and/or withdraw from the hearing as required.
3. If the Member has a DPI or a prejudicial interest in the application s/he must declare the existence and nature of that interest and withdraw from the meeting without discussing or voting on the application. Failure to disclose a DPI is a criminal offence (see Appendix B to the Members Code)
4. Where a Councillor has a personal interest in the decision on the application being determined by the Licensing Sub-Committee, although s/he is not obliged under the Member's Code to make a disclosure of that personal interest to the meeting, s/he should disclose the nature of the interest because of the quasi judicial functions of the sub-committee. If a Member has a personal interest (which does not constitute a DPI or prejudicial interest) s/he can participate in debate and vote on determination of the application. However, due to the quasi judicial functions of the sub-committee, a Councillor should avoid doing so where there is a real possibility of actual or perceived bias. The test is what a fair minded and informed observer would conclude and not the views of the Councillor concerned.
5. Any Councillor who has a prejudicial interest in an application (which does not constitute a DPI) may attend the hearing but only for the purpose of making representations, answering questions or giving evidence relating to the application and provided that the public have not been excluded from the hearing or that part of it. The Member must withdraw from the meeting immediately after the matters permitted above are completed and must not seek improperly to influence any decision about the application. A Member who has a prejudicial interest in an application may prefer to be represented at the hearing by an agent or a fellow Ward Councillor who is not a Member of

the Sub-Committee and who would not be required to leave the meeting before the decision.

6. A Councillor, who is a Member of the Sub-Committee determining the application in question, will have a prejudicial interest (as well as a personal interest) in that application if the he/she makes a relevant representation by way of objection to it and may well have a prejudicial interest if he/she has otherwise been involved in supporting or opposing the application. Any Member of a Sub-Committee who has a prejudicial interest for these or other reasons under the Members' Code must not participate in the decision upon the application and must not be present at the hearing except as provided in the preceding paragraph.
7. Sections 9 and 10 of the Members' Code explain in more detail how an interest affects your participation at meetings.

S. Guidance: Prior Contacts, Lobbying of Members and Expressions of Opinion by Members

1. If a Member of a Sub-Committee is approached by a party, a party's representative or a lobbyist for or against an application to be determined by that Sub-Committee, then the Member must: -
 - (i) explain that s/he cannot discuss the matter, and
 - (j) refer the person(s) to another Councillor who is not a Member of the Sub-Committee or to the Licensing Service who can give further information on the process of dealing with the application, and
 - (k) keep an adequate written record of the approach, and
 - (l) disclose the fact of the approach before the hearing in accordance with Rule 39(c).
2. If a Member of a Sub-Committee receives any written representation either supporting or opposing an application to be determined by that Sub-Committee, then the Member shall pass the representation to the Licensing Service for appropriate action.
3. Where a Member of a Sub-Committee has had any form of personal or business involvement with a party to an application, which is to be determined by the Sub-Committee, or with any person closely connected to a party, then the Member must consider whether such involvement could give rise to an interest which should be declared at the hearing and/or requires them to withdraw in accordance with the guidance contained in section Q. If there is any doubt on this matter, the Member must seek the advice of the Monitoring Officer or the legal representative.
4. A Member of a Sub-Committee must avoid expressing any personal opinion about the merits of an application to be determined by that Sub-Committee and must not take any action that would bring into question the Member's capacity to consider the application objectively.
5. A Member of a Sub-Committee must not accept any gift, favour or free hospitality that could be seen as connected to any application to be determined by that Sub-Committee.
6. Members of Sub-Committees are not to be influenced by party political factors or pressures when determining any application.

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**COMMITTEE PROCEDURE – GAMBLING ACT 2005 –
(Proceedings of Licensing Committees and Sub-Committees
(Premises Licences and Provisional Statements (England and
Wales) HEARINGS REGULATIONS REGULATIONS SI 2007 /
173 (August 2007)**

Each application that comes before this committee will be treated on its own merits, and this licensing authority will take its decision based upon the requirement to aim to permit the use of premises for gambling in so far as this licensing authority think it:

- In accordance with any relevant code of practice
- In accordance with Gambling Commission guidance
- Reasonably consistent with the licensing objectives of the Gambling Act 2005
- In accordance with this licensing authority's Statement of Principles

THE PROCEDURE OF THE LICENSING Sub-COMMITTEE IS AS FOLLOWS:

1. Chair opens the meeting, introduces members of the sub-committee and officers present and explains the procedure to be followed.
2. The Licensing officer outlines the details of the application, any representations received and / or reasons why the licensing authority proposes to attach / exclude conditions, with relevance to the Gambling Commission's guidance, the licensing objectives, and / or the licensing authority's Statement of Principles, highlighting what the committee should have regard to / take into consideration and drawing attention to any other matters that may require clarification or discussion.
3. Members and the parties/representatives may ask any relevant questions of officer.
4. Chair invites applicant (or representative) to address the Committee (includes calling any 'witnesses').
5. When making their initial representation, each representative/party will be given 5 minutes to address the Sub-Committee with the Chair having the discretion to extend this time limit if appropriate.
- 4-6. Members ask relevant questions of applicant / 'witness'.
- 5-7. Parties that made representations to ask relevant questions of applicant / 'witness'.
- 6-8. Parties making relevant representations invited to address Committee.
- 7-9. Members ask relevant questions of party.
- 8-10. Applicant / other parties making representations / officer ask relevant questions of party.
- 9-11. Officer of the licensing authority to ask relevant questions of applicant / 'witness' (where the licensing authority proposes to attach / exclude conditions or there is some other issue requiring clarification/discussion).
- 10-12. Officer of the licensing authority invited to address the committee (where the licensing authority proposes to attach / exclude conditions or there is some other issue requiring clarification/discussion).
- 11-13. Members ask relevant questions of officer.
- 12-14. Applicant / parties making representations ask relevant questions of officer.
- 13-15. All parties invited to summarise (if they so wish).
- 14-16.

~~15.17.~~ Chair asks all parties if they are satisfied that they have had the opportunity to say everything that they wish to.

~~16.18.~~ Members of the Committee retire to reach a decision with the Committee Clerk and legal representative.

19. The decision is confirmed in writing within five working days of the hearing.

~~17. Decision and reasons will be outlined by the Committee Clerk.~~

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PLEASE NOTE

- Changes of committee membership (if any) will be given at the beginning of the meeting.
- Hearings may proceed even if one of the parties is absent. All notices and representations received from absent parties will be considered.
- [Where an applicant fails to attend the hearing they will normally be allowed one further opportunity to attend unless they have asked for the application to proceed in their absence.](#)
- Documentary evidence produced at the hearing will only be considered with agreement of all parties present.
- In cases where a decision cannot be given at the end of the hearing, the decision will normally be made within 5 working days after the day of the hearing and that the parties will be notified in writing.
- Parties have a right to appeal to the Magistrates Courts, within 21 days of notification of the decision.
- The committee may on occasion find it necessary to exclude members of the press and public based upon the reasons set-out in SI 2007 / 173 article 8 which are if any unfairness to a party is likely to result from a public hearing, or there is a need to protect the commercial or other legitimate interests of a party.
- The hearing is intended to take the form of a discussion led by the committee and cross-examination is not encouraged unless the committee considers that it is required for the application to be properly considered.
- The committee has the right to exclude any parties disrupting the hearing or require him / her to meet certain conditions for him / her to continue to take part in the hearing. Any person excluded in this manner is able to submit information in writing to the committee before it finishes.

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LATE BUSINESS SHEET

**Report Title: Agenda Items 11 and 16
NO FURTHER ACTION CODE OF CONDUCT COMPLAINTS -
MONITORING OFFICER ANNUAL REPORT:**

Committee: Standards Committee

Date: 27 June 2023

Reason for lateness and reason for consideration

To ensure that the required detail and information was finalized.

Under s100B(4)(b) of the Local Government Act 1972, the Chair of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency by reason of special circumstances for the reasons set out above and ensure the Committee consider this information in a timely way, in June, rather than the next meeting in October. This was agreed as a late paper due to these circumstances by the Chair on the 19th of June 2023

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Report for: Standards Committee 27th of June 2023

Title: No Further Action - Code of Conduct Complaints - Monitoring Officer Annual Report

Report authorised by: Fiona Alderman – Head of Legal and Governance and Monitoring Officer

Lead Officer: Haydee Nunes De Souza – Head of Legal (Social Care, Education, Employment and Contracts) and Deputy Monitoring Officer

Ward(s) affected: N/A

**Report for Key/
Non Key Decision:** Non key

1. Describe the issue under consideration

1.1 This is an annual report on the code of conduct complaints considered by the Monitoring Officer and determined not to merit any further action.

Cabinet Member Introduction

N/A

2. Recommendations

2.1. The Committee is asked to note the report.

3. Reasons for decision

3.1 The Protocol for Complaints Against Members requires the Monitoring Officer to report annually to the Standards Committee on complaints dealt with by the Monitoring Officer and determined not to merit any further action.

4. Alternative options considered

4.1. There are no alternative options to be considered.

5. Background information

5.1 The Protocol for Complaints Against Members requires the Monitoring Officer to review every allegation of breach of the code of conduct received and to decide on whether it merits reference to the Assessment Sub-Committee of the Standards Committee. The Monitoring Officer must consult with the Independent

Person before making her decision. The Protocol sets out the criteria by which the Monitoring Officer may make the decision, and which are as follows:

5.3 ...The Monitoring Officer may determine that an allegation does not merit any further action, where:

(a) The allegation does not demonstrate a breach of the Members' Code of Conduct; for example it relates to a member's private life to which the Code does not apply or it is about dissatisfaction with a Council decision or service, or

(b) It is about someone who is no longer a member or a co-opted member of the Council, or

(c) There is insufficient evidence upon which to investigate and/or the person making the allegation has failed to co-operate with the Monitoring Officer to specify the allegation sufficiently, or

(d) The same or a similar allegation has been investigated and determined, or

(e) It is an anonymous allegation which does not include sufficient documentary evidence to indicate a significant breach of the Member's Code of Conduct, or

(f) The Monitoring Officer facilitates an informal resolution without the need for a formal investigation. This may involve the member accepting that his/her conduct was unacceptable and offering an apology or other remedial action by the Council. If the Monitoring Officer considers an offer of informal resolution is reasonable but the person making the allegation is not willing to accept it, the allegation will be referred to the Standards Committee for determination, or

(g) the complaint is considered to be frivolous or vexatious, or

(h) The matters to which the allegation refers took place longer than three months before the date of receipt of the allegation and there are no exceptional circumstances which merit the investigation of matters outside that timescale, nor is it otherwise appropriate to investigate the allegation.

5.2 In the period 1 May 2022 – 31 April 2023, the Monitoring Officer determined that 25 complaints of alleged breach of the code of conduct by councillors did not merit any further action. The rationale for the Monitoring Officer decisions were mostly that the conduct complained about did not demonstrate a breach of the code. The Independent Person was consulted in making these decisions and agreed with the Monitoring Officer's conclusion. A table of the complaints is attached in the Exempt Report.

6. Contribution to strategic outcomes

6.1. The report supports the governance of the Council and its decision-making, thereby assisting the Council to meet its strategic outcomes.

7. Statutory Officers comments (Chief Finance Officer (including procurement), Head of Legal and Governance , Equalities)

Finance

7.1. None

Procurement

7.2. None.

Legal

7.3. By virtue of section 27 of the Localism Act 2011, the Council is required to promote and maintain high standards of conduct by members and co-opted members and to adopt a Code of Conduct. The Council's Constitution includes the Code of Conduct and the Protocol for Complaints Against Members. The annual report is in keeping with the requirements of the Protocol and serves to inform the Committee of the exercise of the Monitoring Officer's discretion in managing the members complaint process.

Equality

7.4. None

8. Use of Appendices

8.1. Exempt Appendix 1 – Not for publication by virtue of paragraphs 1 and 2 of Part 1 Schedule 12A of the Local Government Act 1972.

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By virtue of paragraph(s) 1, 2 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is exempt

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