

BIRMINGHAM CITY COUNCIL

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

14 SEPTEMBER 2016
ALL WARDS

CODE OF CONDUCT FOR MEMBERS AND OFFICERS

1. Summary

- 1.1 A report relating to Child Sexual Exploitation, presented to Licensing and Public Protection Committee (LPPC) in January 2016 contained a multi-point action plan.
- 1.2 The purpose of this report is to address one of the matters arising from the subsequent report of February 2016 namely that Officers be instructed to draft a Code of Conduct for Members of the Licensing and Public Protection Committee, to be brought to a future LPPC for agreement with a view to it being presented to the Council Business Management Committee for inclusion in the constitution.

2. Recommendations

- 2.1 That the Committee approves the Draft Code of Conduct for Members and Officers of the Licensing Committee at Appendix 1.
- 2.2 That the Committee recommend the adoption of the Code by way of ratification by Full Council as part of revisions to the Constitution.
- 2.3 That the necessary revisions to the Constitution as detailed in paragraph 5.9 be presented to the Council Business Management Committee to be considered for inclusion in the Constitution.
- 2.4 That outstanding minute 618(ii) be discharged.

Contact Officer: Chris Neville, Head of Licensing
Telephone: 0121 303 6111
e-mail: chris.neville@birmingham.gov.uk

Originating Officer: Emma Rohomon, Licensing Manager
Telephone: 0121 303 9780
e-mail: emma.rohomon@birmingham.gov.uk

3. Background – Licensing and Public Protection Committee

- 3.1 The licensing function of the City Council is disposed of through the processes and procedures of the Licensing and Public Protection Committee, sub-committees and officers by virtue of the Local Government Acts and other relevant statutory provisions.
- 3.2 The Licensing Service is responsible for the administration of grants, renewals and transfers as appropriate of hackney carriage and private hire vehicles, drivers and operators licences and for issuing licences under the Licensing Act 2003 and Gambling Act 2005, sex establishment and animal welfare legislation, and issuing permits for charitable collections and massage and special treatments etc. as well as the associated variations, amendments and transfers, which are carried out under policies delegated by your Committee.
- 3.3 The Court of Appeal stated in the “Hope and Glory” case (2011) that the licensing function of the Licensing Authority is an administrative function, by contrast with the function of the magistrates, which is a judicial function. The Court of Appeal said this:

“The Licensing Authority has a duty, in accordance with the rule of law, to behave fairly in the decision-making procedure, but the decision itself is not a judicial or quasi-judicial act. It is the exercise of power delegated by the people as a whole to decide what the public interest requires.”

This means that it must act in accordance with the two rules of natural justice. These are firstly that everyone has a right to be heard and secondly the rule against bias.

- 3.4 The right to be heard requires that a person directly affected by the matter under consideration must be given a fair opportunity both to state his/her case and to know of and to respond to any objections.
- 3.5 The rule against bias prohibits members participating in any decision if they have a financial or other interest in the outcome. Members will be familiar with this requirement from their general duties as Councillors.

4. The Casey Report – CSE and Licensing in Rotherham

- 4.1 The Casey Report looked into Rotherham MBC having particular regard to the licensing function. The key findings, as set out in the Casey Report’s Executive Summary, are summarised below:
- A council in denial about serious and on-going safeguarding failures.
 - An archaic culture of sexism, bullying and discomfort around race.
 - Failure to address past weaknesses, in particular in Children’s Social Care.

- Weak and ineffective arrangements for taxi licensing which leave the public at risk.
 - Ineffective leadership and management, including political leadership.
 - No shared vision, a partial management team and ineffective liaisons with partners.
 - A culture of covering up uncomfortable truths, silencing whistle-blowers and paying off staff rather than dealing with difficult issues.
- 4.2 The private hire trade in Rotherham was described as ‘vocal and demanding’. Officers expressed the view that the Licensing Service seemed to be more geared towards facilitating the trade than protecting the public. Members added to this pressure to support the trade. Some members on the Board had previously held taxi driver licences. At one point the Board had been reluctant to hear any cases without there being an accompanying conviction. Officers were put under pressure from members to expedite licence applications.
- 4.3 There were instances of members making representations on behalf of the trade or individual drivers. One Councillor wrote to the Crown Court offering a reference for a driver who had his licence revoked. The former Deputy Leader of the Council had made representations on behalf of taxi drivers to speed up the issue of licences in advance of CRB checks. He applied pressure to officers to stop proposals for unannounced safety checks on taxis after receiving representations from the trade. Instead, officers were required to give ten days’ notice of checks, which resulted in VOSA (Vehicle and Operator Services Agency) withdrawing from the plans.
- 4.4 The Birmingham Perspective
Having regard to the points made in paragraphs 4.1-4.3 it is clear that a fundamental review of licensing processes was needed in Rotherham. Following on from that, officers completed a review of our own licensing system in Birmingham. The results of this review were presented to your Committee in January 2016.
- 4.5 One of the findings in the January Report to your Committee was:
“There have been occasions when elected members have attempted to influence licensing decisions at officer level (both taxi and non-taxi decisions). Normally they are councillors who do not sit on the Licensing and Public Protection Committee. Similar pressure is sometimes applied by councillors to other councillors sitting on Licensing sub-committees.”
- 4.6 The action proposed to try and remedy the situation was:
“A separate report to the Licensing and Public Protection Committee proposes that greater decision making powers be delegated to officers with a view to replacing taxi/Private Hire licensing sub-committees with an officer panel for all cases apart from policy decisions.”

5. Code of Conduct

- 5.1 A working group of Members of the Licensing and Public Protection Committee and officers was established to look in to the feasibility of delegating more decisions in relation to Hackney Carriage and Private Hire matters to Officers or to a newly established officer panel.
- 5.2 The findings of the working group were reported your Committee in February 2016 with one of the recommendations of the group being agreed as follows:
Officers be instructed to draft a Code of Conduct for Members of the Licensing and Public Protection Committee, to be brought to a future LPPC for agreement with a view to it being presented to the Council Business Management Committee for inclusion in the constitution.
- 5.3 Working in collaboration with Legal Services, and having regard to existing regulatory codes of conduct such as that in place for Planning Committee, Officers prepared a draft code which is attached at Appendix 1.
- 5.4 Whilst there are frequent instances where officers have been contacted by Elected Members and asked to reconsider decisions which have been made in relation to Hackney Carriage and Private Hire matters, the response from officers is always to explain that a decision has been made in accordance with the proper procedures and legal principles, and to advise of the appropriate mechanism of appeal. It should be emphasised that such interventions are not effective. However, it can put officers in a difficult position.
- 5.5 Similarly, where a licence holder or applicant is before the Committee for consideration of a matter which calls into question whether they are a fit and proper person, there are many occasions where the Committee will be presented with a 'character reference' from another elected member. This could put Members in a difficult position as they may well make a decision which is contrary to that of one of their colleagues.
- 5.6 Again, there is nothing to suggest that Members are not considering each case on its own merits separately to any external factors, but both behaviours identified in 5.4 and 5.5 could give an impression of bias or influence which could damage confidence in the decision making process.
- 5.7 In order to ensure that the reputation of the Licensing and Public Protection Committee, and Birmingham City Council remains unimpeachable the two measures proposed in February were:
- A Member Code of Conduct for Licensing and Public Protection Committee Members, and
 - An amendment to the Code of Conduct for all Elected Members.
- 5.8 The Code of Conduct for Members & General Guidance
The Code of Conduct for Members & General Guidance within the Constitution already states:

"No Councillor shall provide or offer to provide a formal reference for any candidate for employment or promotion with Birmingham City Council as to do so may be perceived as bringing an unacceptable pressure to bear on the appointing officer and any officer appointed as a result of such reference".
Birmingham City Council – Supporting Documents to the Constitution (B7, Para.9)

- 5.9 It is proposed that two additional paragraphs be inserted stating:
"No Councillor shall provide or offer to provide a formal reference for any candidate for or holder of a Hackney Carriage or Private Hire Licence of any kind with Birmingham City Council as to do so may be perceived as bringing an unacceptable pressure to bear on the decision maker(s)."
and
"No Councillor shall seek to influence or overturn any decision of the Licensing Authority in relation to a Hackney Carriage or Private Hire Licence of any kind."

6. Consultation

- 6.1 A working group was established to consider the proposal that greater decision making powers be delegated to officers with a view to replacing Taxi/Private Hire licensing sub-committees with an officer panel for all cases apart from policy decisions, with the invitation to attend extended to all Members of the Committee.
- 6.2 At the initial working group meeting, a draft proposal was put to the group by way of a discussion document, which resulted in officers being asked to identify evidence to support or counter such proposals.
- 6.3 The subsequent findings of officers are presented at Section 5 to this report.

7. Implications for Resources

- 7.1 It is the responsibility of the Committee Chairman and the Director of Regulation and Enforcement to ensure the services provided by the Committee are contained within the approved budget.

8. Implications for Policy Priorities

- 8.1 The issues addressed in this report relate to the City Council priorities associated with creating a cleaner, greener and safer city and providing excellent services.

9. Implications for Equality and Diversity

- 9.1 The matters identified in this report are in accordance with Regulation and Enforcement's enforcement policies which ensure that equality issues have been addressed.

ACTING DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: Working Party Discussion Documents

LICENSING COMMITTEE CODE OF PRACTICE FOR COUNCILLORS AND OFFICERS

1. PURPOSE OF THIS CODE

- 1.1 This Licensing Code of Practice ('the Licensing Code') has been prepared to guide members and officers in the discharge of the City Council's statutory Licensing functions. This Code will also inform potential applicants and the public generally of the high standards of ethical conduct adopted by the Council in the exercise of its Licensing powers.
- 1.2 The Licensing Code is in addition to Birmingham's Code of Conduct for Members, which was adopted by the City Council in June 2012. For the avoidance of doubt, when an Executive Member attends and participates in the decision-making of the Licensing Committee, s/he does so as a Member of the Committee and not as a Member of the Executive. Accordingly, s/he must, along with other Members of the Committee, exercise an independent mind on issues before the Committee.
- 1.3 The provisions of this Licensing Code are designed to ensure that Licensing decisions are taken on proper grounds, are applied in a consistent and open manner and that Members making such decisions are held accountable for those decisions. The Licensing Code is also designed to assist Members and officers in dealing with approaches from applicants or those who already have a relevant Licence/permit, etc.
- 1.4 Throughout this Code, reference is made to the Licensing Committee. This refers to the Licensing and Public Protection Committee ("LPPC"), in the context of its determination of applications for licences i.e where the Committee performs the functions of the Licensing Authority, rather than in the context of non-Licensing Authority decisions.
- 1.5 Any reference to Licensing Committee equally refers to any Licensing Sub-Committee.

2. CONTEXT

- 2.1 This Licensing Code applies to both Councillors and officers– it is not therefore restricted to Licensing Committee members. The successful operation of the Licensing system relies on mutual trust and understanding of each other's role. It also relies on both Members and Officers ensuring that they act in a way which is not only fair and impartial but is also clearly seen to be so.

The Human Rights Act provides additional safeguards for citizens, and encourages the application of best practice. Article 6 is concerned with guaranteeing a right to procedural fairness, transparency and accountability in the determination of civil rights and obligations.

- 2.2 This code must be read in conjunction with (where appropriate):
 - The LPPC Policies Procedures and Delegations.
 - The Statement of Licensing Policy.
 - Home Office Guidance (s182) – issued under S182 Licensing Act 2003.

- The Statement of Gambling Principles and relevant guidance issued by the Gambling Commission.
- The Sexual Entertainment Venue Policy.
- Code of Conduct for Members.
- Code of Conduct for Officers.

3. GENERAL CONSIDERATIONS

- 3.1 In relation to Hackney Carriage and Private Hire applications, (generally speaking) the Licensing Authority **MUST NOT** issue a licence to a driver, operator or vehicle proprietor unless they are satisfied the applicant is a fit and proper person.
- 3.2 In relation to Licensing Act matters, where an application has been properly made and no responsible authority or other person has made a relevant representation or where representations are made and subsequently withdrawn, the licensing authority **MUST** grant the application in the terms sought, subject only to conditions which are consistent with the operating schedule and relevant mandatory conditions under the 2003 Act.
- 3.3 If the licensing authority decides that representations are relevant, it must hold a hearing to consider them. The need for a hearing can only be avoided with the agreement of the licensing authority, the applicant and all of the persons who made relevant representations.
- 3.4 Birmingham City Council's Code of Conduct for Members (adopted June 2012) must be complied with throughout the decision making process, which includes mandatory requirements with regard to member interests.
- 3.5 The responsibility for declaring an interest rests with individual Members and Officers of the Council. This Licensing Code outlines further rules applicable to the Licensing process in Birmingham.
- 3.6 Councillors and Officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate, whilst Officers are responsible to the Council as a whole. This applies equally to traditional forms of political management based on Committees and to models based on forms of executives or elected mayors. Officers advise Councillors and the Council and carry out the Council's work. They are employed by the Council, not by individual Councillors, and it follows that instructions may only be given to Officers through a decision of the Council, the Executive or a Committee. A successful relationship between Councillors and officers can only be based upon mutual trust, respect, courtesy and understanding of each other's positions. This relationship, and the trust which underpins it, should never be abused or compromised.
- 3.7 Both Councillors and Officers are guided by Codes of Conduct. Birmingham's Code of Conduct for Members provides standards and guidance for Councillors. Employees are subject to the Employees' Code of Conduct. In addition to these codes, a Council's standing orders set down rules which govern the conduct of Council business. There is also a Member / Officer Protocol that assists in defining the relation with both.
- 3.8 Birmingham's Code of Conduct for Members sets out the requirements on Councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to Council business, including the need to register and declare interests, but also appropriate relationships with other Members, staff and the public, which will impact on the way in which

Councillors participate in the Licensing process. Of particular relevance to Councillors serving on the Licensing Committee or Executive, or who become involved in making a Licensing decision is the requirement that a Member must not use their position improperly for personal gain or to advantage friends or close associates.

3.9 The basis of the Licensing system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved.

3.10 From time to time applicants may submit confidential information for example a financial appraisal in support of an application. Such appraisals will be taken into account in relation to determination of the application, but such information may be exempt from the requirement from disclosure.

3.11 Public Speaking

During public speaking at Licensing Committee, the following should not occur:

- Members should not cross-examine members of the public at any time;
- Members should not ask leading questions of officers or members of the public as by way of introducing new facts to the debate;
- Members should only ask relevant questions; and
- Late evidence should not be introduced by speakers at Committee – unless authorised at the discretion of the Chairperson. with the agreement of all parties.

3.12 Conflicts of Interest

Some Members in general are more likely than others to be uncomfortable in the role of Licensing Committee Member owing to the combined pressures of their local business interests, the ward member advocate role, and the constraints of the Licensing system. Any potential licence-related background may also give rise to a perception by the public that they are more likely to be in favour of an application, even where they are determining cases completely impartially. In order to minimise the risk for the Council and the Member concerned, the Member in question should discuss their position carefully with the Director of Regulation and Enforcement and Monitoring Officer for the Council, of the Council to see whether it would be suitable for him/her to become a Member of Licensing Committee or if already a Member take part in the determination of any applications before them

4. LOBBYING AND ATTENDANCE AT PUBLIC MEETINGS

General

4.1 Given the requirement that Members of the Licensing Committee should exercise an independent mind to applications in accordance with the relevant considerations, Members must not favour any person, company, group or locality. Members can, of course, form and express a personal opinion on Licensing applications but they are advised to indicate that they will only form a final opinion about an application after full consideration of all the evidence, representations and submissions made. Members should be careful not to publicly commit themselves to a particular outcome on an application prior to its full consideration at Committee, as to do so could be perceived by others as the Member having closed his/her mind to hearing all the relevant considerations. If that were to happen, he/she should be asked by the

Chairman of the Committee, the Director of Regulation and Enforcement and/or the Monitoring Officer (or their representatives) not to:

- (a) take any further part in the consideration of the application; and
 - (b) vote on the application. This can only be transparently demonstrated by the relevant Member not attending the meeting or leaving the Committee Room in order to ensure the integrity of the whole decision making process. If the relevant Member wishes to speak at Committee then they should declare their pre-determined position and withdraw from the meeting. This is to ensure Members of the Licensing Committee do not, by their presence, influence or seek to influence the remainder of the decision making body. Members should always notify Committee of any approach by any group, person or company prior to the discussion of the relevant matter.
- 4.2 Members of the Committee who may be involved in the determination of an application are, of course, free to listen to a point of view about a proposal, give procedural advice and agree to forward any comments, but should then refer the person to Officers. Members in this situation may indicate (or give the impression of) support for or opposition to a proposal, but should avoid giving the impression of a closed mind.
 - 4.3 Whilst Members involved in making decisions on applications may begin to form a view as more information and opinions become available, a decision can only be taken by the Committee after all available information is to hand and has been duly considered. In this regard, any political group meetings prior to the Committee meeting should not be used to determine how Councillors should vote. Decisions can only be taken after full consideration of the evidence, representations and submissions made.
 - 4.4 The Chairman of the Committee should be briefed by Officers prior to the main Committee meeting, as part of the pre-agenda process.
 - 4.5 Councillors involved in decision making on Licence applications should not, whether orally or in writing, organise support or opposition to a proposal, lobby other Councillors, act as advocate or put pressure on officers for a particular recommendation. However, other Councillors (who are not part of the decision making process) within that Committee Member's Ward, can make written representations to the Licensing Committee.
 - 4.6 A Member involved in determining applications may respond to lobbying by openly expressing an opinion prior to the full report of the Director of Regulation and Enforcement to a Committee meeting (and there may be particular local circumstances where this is considered appropriate) but should indicate they will not make a final decision until after full consideration of all the evidence, representations and submissions.
 - 4.7 If a Member involved in determining applications goes so far as to make it clear beyond doubt that they have a completely closed mind which could not be shifted, this would amount to predetermination and the Member concerned should respond as in 4.1.
 - 4.8 Where Members involved in the determination of applications are in attendance at public meetings or Ward meetings they may listen to the debate on current applications, provide advice about procedures involved in determining an application and express a view about an application but should respond as in 4.6.

4.9 Members Predetermination of Applications

Section 25 of the Localism Act 2011 states that prior indications of a view of a matter do not amount to predetermination in the following situations:

- (2) A decision-maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because-
- (a) the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter and
 - (b) the matter was relevant to the decision.

The advice provided by the Monitoring Officer is that this is the present position with regard to the Legislation but whilst Members are entitled to express a view in relation to an application Members should indicate they still have an open mind in relation to an application until they have had the opportunity to consider the report of the Director of Regulation and Enforcement and that the final decision in relation to the application can only be made by Committee. This caveat is intended to safeguard so far as possible the decision made by Committee from Judicial Review until further case law and guidance has assisted with the interpretation of Section 25 of the Localism Act 2011.

Dealing with Correspondence

- 4.10 Members of the Committee and Executive often receive correspondence from constituents, applicants and other interested parties asking them to support or oppose a particular proposal. Members should forward a copy of the correspondence to the Director of Regulation and Enforcement or inform him/her at the Committee if time is short. Merely forwarding the correspondence onto the relevant officer would not prevent the Member being involved in determining the application.

Pre-Application Discussions

- 4.11 When involved in pre-application discussions, Officers should always act fairly to all and completely impartially by providing accurate advice and assistance when required or requested by the general public, applicants or Members. A written record of all such discussions must be retained on the Licensing file.

Site Visits by Members with Officers

- 4.12 The deferral of a relevant application for a site visit should not be on the basis of exposing members of the Committee to local opinion, but should be on sound and proper Licensing reasons, which shall be recorded in the minutes of the meeting.
- 4.13 Under the Chairman's guidance the role of the Licensing Officer attending the site visit will be:
- (a) to brief Members on the Licensing applications(s) the subject of the visit and explain the reasons why the application was deferred for a visit;
 - (b) to ensure that the views of all interested parties are heard by all Members on the site visit and accurately recorded. Officers will prepare a written report of the site visit which will be taken back to Licensing

Committee to form the basis of a further discussion at a subsequent meeting.

- 4.14 The Chairman (or Member chairing the visit) shall explain the purpose of the visit and how it will be conducted to all persons present at the site visit.
- 4.15 Officers shall ensure, where practical, that applicants, Members and interested parties are invited to attend the visit and that they are able to view all key parts of the site, which is the subject of the Applications.
- 4.16 The purpose of a site visit conducted by Members and officers is to gain information relating to the land or buildings which are the subject of the Licensing application and which would not be apparent from the Licensing application to be considered by the Committee. A site visit may also assist Members in matters relating to the context of the application in relation to the characteristics of the surrounding area, and is an opportunity to hear the views of the members of the public, applicants and other interested parties. Discussions on site visits shall be confined to the application as currently submitted. A Member of Committee who has an interest in a Licensing application, or who has acted in a way that amounts to predetermination, cannot attend the site visit in his or her capacity as a Member of Licensing Committee. However, the Member concerned would be entitled to attend the site visit in his or her personal capacity as a member of the public.
- 4.17 Whilst on site visits, Members of Committee can express an opinion on the application or its merits, but should avoid making comments or acting in a way which makes it clear beyond doubt that they have a completely closed mind, as this would amount to predetermination. Whilst Members of Committee are not prevented from engaging individually in discussion with applicants or objectors, to ensure transparency of public dealing by Member and effective /orderly management of the site visit, it is recommended that any question of the applicant(s) / objector(s) by the Licensing Officer and/or Members should be made in the presence of the other parties (or their representatives if there is a large scale public interest).
- 4.18 Members and Officers are obligated not to waste Council resources and, as such, a site visit is only likely to be necessary if:
- the impact of the proposed application is difficult to visualise from the plans and any supporting material, including photographs taken by officers (although if that is the case, additional illustrative material should have been requested in advance); or
 - there is good reason why the comments of the applicant and objectors cannot be expressed adequately in writing, or the proposal is particularly contentious.
- 4.19 Where there is substantial public interest in a proposal and relevant representations have been made, the Council may invite all parties to visit the site so that they may point out all the areas of contention to Members of the Licensing Committee and give their views. A note of proceedings will be taken at these meetings and minutes kept as part of the official record.
- 4.20 Results of the site visit will be reported to the next available meeting of the Committee.
- 4.21 Once the results of a site visit have been reported back to Committee, Members of the Committee who were not present at the site visit can ask questions, offer opinions, take part in discussions and vote in relation to that Licensing application.

4.22 The Role of Ward Councillors and MPs on Site Visits

Where relevant representations have been made Ward Councillors and MPs may attend and participate in site visits putting forward their point of view. However, the determination of Licensing applications rests solely with the Licensing Committee and no indication should be given by Members of the Committee of the likely decision during the course of the site visit.

5. **MEETINGS OF THE LICENSING COMMITTEE**

5.1 A Member shall not vote in relation to any Licensing application unless he or she has been present in the meeting of the Licensing Committee for the whole of the deliberations on that particular application.

5.2 A senior legal officer should always attend meetings of the Licensing Committee to ensure the probity and propriety of the Licensing and decision-making processes.

5.3 Where there is any doubt as to the voting or of the actual counting of votes in relation to any particular application, clarification should be immediately sought by the Chairman prior to dealing with the next agenda item, by requesting from each member as to how they have voted, noting this and the member's name.

5.4 Chairmanship – The chairman should ensure:

5.4.1 Members' comments at Committee only relate to the relevant merits of the application before them;

5.4.2 reference at Committee to matters which are not relevant should be disregarded;

5.4.3 the cross-questioning of speakers should only take place if there is need for clarification of what a speaker has already outlined; and done in accordance with the appropriate Procedural Rules for the Hearing in question.

6. **TRAINING**

6.1 Members dealing with Licensing issues will be required to attend a training session each year to receive guidance in relation to Licensing regulations and procedures and on declaration of personal or prejudicial interests. Training will be conducted in accordance with the Training for Councillors standard. Members who fail to attend such training will be excluded from meetings of Licensing Committee. This training should include a balance of the following:-

- Short (half day) sessions on special topics of interest or where appeals have indicated problems with Licensing policy;
- Special topic groups to consider thorny issues in depth;
- Formal training by internal and external speakers;
- Quick presentations by officers on hot topics, e.g. new legislation, white papers and their impacts, followed by a brief question and answer session.

7. LICENCE APPLICATIONS SUBMITTED BY COUNCILLORS AND OFFICERS

- 7.1 Serving Councillors or their relatives who act as agents for people pursuing a Licensing matter will not be permitted to play any part in the decision making process for that proposal. Similarly, should they or their relatives submit their own proposal to the Council, they will take no part in its processing, as in both cases they will have an interest in the matters.
- 7.2 In cases where officers of this Department or members of their family submit a licence application, or where they have an interest in a particular application they should inform the Director of Regulation and Enforcement and Monitoring Officer accordingly. (eg- where an application is submitted by a limited company and an Officer is a director (or similar) of the company.

8. REGISTRATION AND DECLARATION OF INTERESTS

- 8.1 The Localism Act 2011 and the Birmingham Code of Conduct for Members place requirements on Members on the Registration and Declaration of their interests and the consequence for the Members participation in consideration of an issue in the light of those interests. These requirements must be followed scrupulously and Members should review their situation regularly. Guidance on the registration and declaration of interests is dealt with by the Birmingham Code of Conduct for Members.

9. COMPLAINTS ABOUT THE DETERMINATION OF LICENSING APPLICATIONS

- 9.1 Whatever procedures the City Council operates, it is likely that complaints will be made. However, the adoption of the advice in this guidance should greatly reduce the occasions on which complaints are justified. It should also provide less reason for people to complain in the first place.
- 9.2 There is a city-wide procedure for dealing with complaints, as well as customer comments and compliments. Complaints alleging a breach of the Birmingham's Code of Conduct for Members must be reported to the Monitoring Officer.
- 9.3 So that complaints may be fully investigated and, in any case, as a matter of general good practice, record keeping should be complete and accurate. Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Council's case. The guiding rule is that every application file should contain an accurate account of events throughout its life. It should be possible for someone not involved in that application to understand what the decision was, why and how it had been reached. Particular care needs to be taken with applications determined under the powers delegated to the Director of Regulation and Enforcement, where there is no report to a Committee. Such decisions should be well documented and form part of the case file. It is preferable to use the complaints procedure prior to any recourse to the Local Government Ombudsman.
- 9.4 Where any right of appeal exists against a decision of the Licensing Committee, that right is to be communicated at the time of the notification of decision.

10. CONCLUDING REMARKS

- 10.1 Maintaining high ethical standards enhances the general reputation of the City Council, its Members and its officers. Open and transparent decision making enhances local democracy and should lead to better informed citizens. A common understanding of the various roles, responsibilities and accountabilities should also enhance citizen participation. This Licensing Code, along with Birmingham City Council's Code of Conduct for Members, therefore, serves an essential part in the local and corporate governance of Birmingham City Council
- 10.2 The City Council's Head of Paid Service, the Monitoring Officer and the Section 151 Officer have been consulted over this Licensing Code.
- 10.3 If any person believes that a Member or Officer has breached any aspect of this Licensing Code, s/he should refer the matter to the City Council's Monitoring Officer.

Prepared by the (Joint) Acting City Solicitor and Monitoring Officer of Legal and Democratic Services and the Acting Director of Regulation and Enforcement