Newcastle City Council

THE NEWCASTLE CHARTER

Part 5.4E – Licensing Committee Protocol

Notes:-

This constitutes a local protocol a breach of which will constitute a breach of paragraph 6 of the Code of Conduct for Members at Part 5.2A.

It also has to be read in conjunction with:

Protocol - Member/Officer Relations. (Part 5.4A of the Newcastle Charter).

This Protocol was approved by City Council on 23 May 2007. Minor changes were made in 2008 to reflect the revised Members' Code of Conduct.

Changes were made in 2012 to reflect the new Members' Code of Conduct and up to date legislation.

Further changes were made in 2014 to reflect the changes made to the Council's licensing procedures and organisational matters and up to date legislation.

City of Newcastle upon Tyne

Protocol- Licensing Committee

This Protocol sets out principles to guide members and officers in determining licensing applications and making other decisions within the terms of reference of Licensing Committee.

Although it is of particular relevance to members of Licensing Committee, **it applies to all members of the Council who may become involved in licensing matters**. It will be distributed annually to all members of the Council.

Officers participating in the Licensing Committee process must comply with the Employees Code of Conduct (Part 5.2C of the Newcastle Charter)

Copies will be available for the public in the Public Safety and Regulation services, Democratic Services, and the Council's website.

City of Newcastle upon Tyne

Protocol- Licensing Committee

1. INTRODUCTION

This Protocol contains guidance for members of the Licensing Committee. If members are uncertain about the application of the Protocol, they should seek guidance from officers, preferably in advance of any meeting. (Appendix A contains a list of current contact officers).

Licensing has a very important role to play in the life of the City. The Licensing Committee determines applications under the Licensing Act 2003 and applications under the Gambling Act 2005. Licensing Committee will consider applications for sexual entertainment venues under the Local Government (Miscellaneous Provisions) Act 1982 (as amended) but will not do so in its capacity as a statutory licensing committee. The Licensing Act 2003 regulates 'licensable activities' which are defined in the Act as the sale of alcohol, supply of alcohol by a club, regulated entertainment, and late-night refreshment. The Gambling Act 2005 regulates the licensing of gambling premises and certain permissions.

In this Protocol, reference to 'the Regulations' means The Licensing Act 2003 (Hearings) Regulations 2005 (SI 2005 No 44) and/or The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 (SI 2007 No 173)

2. INTERESTS OF THE WHOLE COMMUNITY

- Members of Licensing Committee should determine licensing matters in the interests of the whole community of the City.

- All applications should be determined with regard to the relevant legislation, the statutory guidance and the Licensing Policy/Gambling Policy adopted by the Council.

- Members of Licensing Committee should not prejudge licensing applications nor do anything that may reasonably be taken as giving an indication of having prejudged licensing applications.

- All other members should have regard to these principles when dealing with licensing matters and must avoid giving the impression that the Council may have prejudged the matter.

3. PARTICIPATION OF MEMBERS

(i) Members must consider carefully whether it is right for them to participate in a matter before the Committee. There are two elements to this:

(a) where they have personal and non-participatory interests.

(b) where members of the public may feel that the member will not be able to approach matters with an open mind and consider the application on its own merits.

While this Protocol seeks to guide Members, each situation will be different, and Members should seek guidance from Officers.

Personal and non-participatory interests

(ii) Members must comply with the provisions regarding personal interests and non-participatory interests set out in Parts 2- 4 of the Code of Conduct for Members (Part 5.2A of the Newcastle Charter).

In particular, members must be mindful that if they have a “non-participatory interest” as defined in the Members’ Code of Conduct, they must withdraw from the meeting and take no part in the matter.

However, a member may stay for a hearing to make representations, answer questions, give evidence (including questioning the evidence and representations of others) and sum up provided that the member leaves immediately before the sub-committee retires to discuss and make their decision.

(iii) Pre-judgment

Section 25 of the Localism Act 2011 provides that:

“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 because:
a) the decision-maker had previously done anything that directly or individually 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 key point is that by the time the member considers the application they must have an open mind and appear to have an open mind when determining the application.

While the Code of Conduct for Members provides guidance as to personal and non-participatory interests which may affect a member's ability to take part in the decision-making process, members may have other interests which may influence their decision which will not amount to personal or non-participatory interests for the purposes of the Code. In order to

maintain the integrity of the licensing system, members should be careful to ensure that such interests do not unduly influence their decisions. Such interests may arise:-

- from ward concerns
- from membership of other Committees of the Council
- from membership of other public or community bodies
- from membership of voluntary associations and trusts (including where appointed by the Council)
- from a connection with a particular policy initiative of the Council.
- from membership of clubs, societies, and groups
- from hobbies and other leisure interests
- from employment or professional concerns.

Such interests may mean that a Member is involved with a licensing application before the matter comes before the Licensing Committee. Such involvement need not on its own debar a member from participating in making the licensing decision when the matter is considered by Licensing Committee providing that the member has not already decided how they will vote on the matter before the Committee. Members should, however, always consider carefully whether in any particular case they can reasonably be seen to approach the application on its own merits and with an open mind. If the member considers that this is not possible, the member should withdraw from consideration of that item.

As a minimum, the integrity of the licensing system requires openness on the part of members; it must operate fairly and be seen to operate fairly.

4. POLITICAL GROUP MEETINGS

Members of Licensing Committee must not base their decision on any discussion that may have taken place in a political group meeting. To do so would mean that Members have not come to the Committee meeting with an open mind, and that they may have been influenced by group discipline rather than the merits of the case. The Ombudsman has found maladministration in cases where members have been influenced by political group decisions in deciding planning applications, and the same principles apply to licence applications.

5. ANNUAL RETURN

Members of Licensing Committee and officers who attend Licensing Committee regularly should complete the Annual Return in the form set out in Appendix B.

6. NATURAL JUSTICE

There are two elements to natural justice:

(a) Fairness

(i) When the Licensing Committee is considering an application, all parties will be given an opportunity to put his/her case before the Committee, in accordance with the Regulations governing such hearings and the Procedure adopted by the Licensing Committee. If a party or his/her representative does not attend, the Licensing Committee may proceed in his or her absence in accordance with the Regulations and the Procedure.

(ii) The Licensing Authority will arrange a hearing when it receives relevant representations under the legislation.

(iii) All documentation to be considered by the Licensing Committee will be available in advance in accordance with the Regulations and the Procedure.

(iv) All Members of the Licensing Committee shall be present throughout the consideration of a particular application. Where a Member arrives late or leaves the room once consideration of the matter has started, that Member shall play no part in the decision-making process for the particular application. Where an application is adjourned it shall be heard by the same Members only, and no others.

(b) Prevention of Bias

(i) The rules about personal and non-participatory interests set out in Parts 2- 4 of the Code of Conduct for Members (Part 5.2A of the Newcastle Charter) shall be firmly applied. Members are also referred to the guidance about prejudgement in paragraph 3.

(ii) When the Licensing Committee moves into private session to consider its decision, it should be accompanied only by its Democratic Services Officer, legal adviser and advising officer, all of whom shall have taken no substantive part in the debate and shall play no substantive part in the decision-making process.

7. HEARINGS

Hearings shall generally be in public, and the Committee shall retire to consider its decision and take advice from officers.

8. DEBATE

(a) Only members of the Licensing Committee can take part in the decision making.

(b) All members of the Council have the right to attend meetings of Licensing Committee under the Council Procedure Rules. Such members may not remain if the Licensing Committee goes into private session to consider their decision.

(c) Members of Licensing Committee must:-

(i) listen to all arguments for and against an application and weigh them up carefully before deciding whether to support or oppose a particular application.

(ii) make sure that they are not swayed by arguments which are not directly related to the merits of the application.

9. GENERAL PROCEDURES FOR DEALING WITH APPLICATIONS AND HEARINGS

The Procedure for dealing with applications and hearings is set out in the Licensing Act 2003 and Gambling Act 2005 and regulations made under those Acts, government and Gambling Commission guidance, the Council's Statement of Licensing Policy and Statement of Licensing Principles and guidance documents and protocols prepared from time to time by the Council. These can be accessed by the Internet:-

Legislation and Regulations: www.legislation.gov.uk
Home Office Guidance: www.gov.uk
Gambling Commission: www.gamblingcommission.gov.uk
Newcastle City Council: www.newcastle.gov.uk/business/licences

These additional guidance documents and protocols do not constitute a local protocol (breach of which will constitute a breach of paragraph 6 of the Code of Conduct for Members at Part 5.2A) but may be relevant in determining whether there has been a breach of the Code of Conduct for Members or a local protocol.

9A. ROLE OF MEMBERS IN RELATION TO APPLICATIONS

Licensing Act 2003

S18 of the Licensing Act 2003 provides that representations must be made by a responsible authority or other person. The term "other person" is very wide. To be relevant the representation must meet the relevant criteria set out in S18(6) of the Act. It is no longer necessary for such a person to live in geographical proximity to the premises. As well as acting

in their own right, such a person may also request that a representative makes the representation on their behalf.

Consequently, members are able to make representations in relation to this Act.

This section of the Act is explained in paragraphs 8.12 – 8.14 of the Guidance issued by the Government and a copy can be obtained from officers if necessary.

Gambling Act 2005

S 158 of the Gambling Act 2005 sets out who is an interested party in relation to an application under this Act for a premises licence for gambling. An interested party is a person who:

a) lives sufficiently close to the premises to be likely to be affected by the authorised activities;
b) has business interests that might be affected by the authorised activities; or
c) represents persons who satisfy paragraph (a) or (b).

Guidance issued under the Act by the Gambling Commission states at Para.8.16 provides that elected Members may be interested parties.

Paragraphs 8.9 to 8.17 of the Guidance explains the position.

10. LOBBYING

While recognising that lobbying of members has an important role in the local democratic process, this should not prejudice the licensing process. See Appendix C for guidance.

11. HOSPITALITY

Members should not accept gifts or hospitality from applicants or objectors in connection with their membership of the Licensing Committee as this might reasonably be interpreted as likely to influence a Member's judgement.

In addition, all Members must comply with paragraph 3 of Annex 3 of the Code of Conduct for Members (Part 5.2A of the Newcastle Charter).

If you have received within the previous 3 years the offer of a gift or hospitality with an estimated value of more than £50 (whether or not you accept the offer) from any person, which is attributable to your position as an elected or co-opted member of the Council this will be a registerable personal interest.

All receipts or offers of gifts or hospitality of at least £50 in value must be notified to the Service Manager Democratic Services on behalf of the Monitoring Officer.

12. VISITS TO PREMISES

The main role of Licensing Committee is to decide individual applications which is a quasi-judicial function. The Committee (in conjunction with the appropriate scrutiny committee) also has a role in deciding a policy framework.

The Committee may find it useful in the course of its deliberations on an application to visit the premises in question. While it is proper for the Committee to do this, care must be taken not to prejudice the integrity of the licensing process. The following ground rules will help to prevent this:

- Arrangements for visits should be approved by the Committee and arranged by officers. Members should not make their own arrangements. If Members are approached direct, they should pass the person concerned on to officers.

- Members should not accept any gift or any hospitality during such visits. Any such offer must be registered whether or not it is accepted (see paragraph 11 above).

- There should be no discussion of individual applications - including those that have been determined, those that are pending and those that potentially could arise in the future.

- At such visits, there should be no one-to-one discussions between Members and others.

- Officers should always be present at such visits.

- A note should be kept of who attended the visits, what occurred and an outline of any discussions. A copy should be placed on the relevant directorate file and open to public inspection.

- Members may attend on such visits with the Applicant and/or representatives of responsible authorities*, other persons and interested parties.**

*NOTE: '*responsible authority'* in the Licensing Act 2003 is defined in S13(4) as follows:-

(4) "Responsible authority" means any of the following –

(za) the relevant licensing authority and any other licensing authority in whose area part of the premises is situated, and

(a) the chief officer of police for any police area in which the premises are situated,
(b) the fire and rescue authority for any area in which the premises are situated,
(ba) the local authority in England whose public health functions within the meaning of the National Health Service Act 2006 are exercisable in respect of any area in which the premises are situated,
(c) the enforcing authority within the meaning given by section 18 of the Health and Safety at Work etc. Act 1974 for any area in which the premises are situated,
(d) the local planning authority within the meaning given by the Town and Country Planning Act 1990 (c.8) for any area in which the premises are situated,
(e) the local authority by which statutory functions are exercisable in any area in which the premises are situated in relation to minimising or preventing the risk of pollution of the environment or of harm to human health,
(f) a body which –

(i) represents those who, in relation to any such area, are responsible for, or interested in, matters relating to the protection of children from harm, and
(ii) is recognised by the licensing authority for that area for the purposes of this section as being competent to advise it on such matters,

(h) in relation to a vessel –

(i) a navigation authority (within the meaning of section 221(1) of the Water Resources Act 1991 (c.57)) having functions in relation to the waters where the vessel is usually moored or berthed or any waters where it is, or is proposed to be, navigated at a time when it is used for licensable activities,
(ii) the Environment Agency,
(iii) the Canal & River Trust or
(iv) the Secretary of State,

(i) a person prescribed for the purposes of this subsection.""

**"interested parties" and "responsible authorities" in the Gambling Act 2005 are defined in S157 and S158 as follows:

"157 Responsible authorities

For the purposes of this Part the following are responsible authorities in relation to premises-

(a) a licensing authority in England and Wales in whose area the premises are wholly or partly situated,

(b) the Commission,

(c) either-

(i) in England and Wales, the chief officer of police for a police area in which the premises are wholly or partly situated, or

(ii) in Scotland, the chief constable of the police force maintained for a police area in which the premises are wholly or partly situated,

(d) the fire and rescue authority for an area in which the premises are wholly or partly situated,

(e) either-

(i) in England and Wales, the local planning authority, in accordance with Part I of the Town and Country Planning Act 1990 (c.8), for an area in which the premises are wholly or partly situated, or

(ii) in Scotland, the planning authority, in accordance with Part I of the Town and Country Planning (Scotland) Act 1997 (c.8), for an area in which the premises are wholly or partly situated,

(f) the council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39) for an area in which the premises are wholly or partly situated,

(g) an authority which has functions by virtue of an enactment in respect of minimising or preventing the risk of pollution of the environment or of harm to human health in an area in which the premises are wholly or partly situated,

(h) a body which is designated in writing for the purposes of this paragraph, by the licensing authority for an area in which the premises are wholly or partly situated, as competent to advise the authority about the protection of children from harm,

(i) Her Majesty’s Commissioners of Customs and Excise, and

(j) any other person prescribed for the purposes of this section by regulations made by the Secretary of State.

158 Interested Party

For the purposes of this Part a person is an interested party in relation to a premises licence or in relation to an application for or in respect of a premises licence if, in the opinion of the licensing authority which issues the licence or to which the application is made, the person-

(a) lives sufficiently close to the premises to be likely to be affected by the authorised activities,

(b) has business interests that might be affected by the authorised activities, or

(c) represents persons who satisfy paragraph (a) or (b).”

13. STATUTORY DUTIES

The Council is subject to a number of statutory duties which it must comply with when carrying out its statutory functions. These will apply to the licensing function except when such matters are clearly immaterial in the light of the particular statutory regime. Examples of these duties include:

EQUALITY ACT 2010 – section 149 provides that:

A council must, in the exercise of its functions, have due regard to the need to (1) eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010; (2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (3) foster good relations between persons who share a protected characteristic and persons who do not share it.

The above powers relate to the following protected characteristics:
(a) age
(b) disability
(c) gender reassignment
(d) marriage and civil partnership
(e) pregnancy and maternity
(f) race (including colour, nationality and ethnic or national origins)
(g) religion or belief
(h) sex
(i) sexual orientation.

HUMAN RIGHTS - section 6(1) of the Human Rights Act 1998 provides that:

"It is unlawful for a public authority to act [or fail to act] in a way which is incompatible with a Convention right".

BEST VALUE - section 3(1) of the Local Government Act 1999 provides that:

"A best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness"

CRIME AND DISORDER - section 17(1) of the Crime and Disorder Act 1998 provides that:

"Without prejudice to any other obligation imposed on it, it shall be the duty of a [local authority] to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent,
(a) crime and disorder in its area (including anti-social and other behaviour affecting the local environment); and
(b) the misuse of drugs, alcohol and other substances in its area; and
(c) re-offending in its area: and
(d) serious violence in its area.

14. PRESS COMMENTS

(i) All members should ensure that any contact which they may have with the press should accord with the principles of this Code and should not affect the integrity of the licensing system.

Members should also comply with paragraph 20 in the Protocol - Member/Officer Relations (Part 5.4A of the Newcastle Charter) which is set out in Appendix D.

(ii) The principles of the code apply to press contact; in particular:-

- Members of Licensing Committee should ensure that they do not create the impression that they have prejudged the licensing application.

- All other members should ensure that they do not create the impression that the Council has already pre-judged the licensing application.

15. SCRUTINY

The role of scrutiny committees is explained in the Scrutiny Committee Procedure Rules (Part 4E of the Newcastle Charter).

The "call-in" procedure allows scrutiny committees to ask executive decision-makers to reconsider decisions before they are implemented. Under the Local Government Act 2000, this does not apply to non-executive decisions such as those made by Licensing Committee.

Individual decisions by the Licensing Committee are subject to appeal to the Magistrates' Court.

Scrutiny committees may review and scrutinise the overall work of Licensing Committee if it forms part of their agreed work programme. The power to review and scrutinise should normally be used as part of wider policy review, and scrutiny committees should not scrutinise individual decisions made by Licensing Committee. **See above** in relation to decisions of the Licensing Committee and the right of appeal to the Magistrates' Court.

16. BREACHES

A breach of this Protocol will constitute a breach of paragraph 6 of the Code of Conduct for Members. Complaints about any breach of this Protocol by a Member may be referred to the Monitoring Officer in accordance with the Protocol – Arrangements for dealing with complaints (Part 5.4G of the Newcastle Charter).

APPENDIX A - CONTACT OFFICERS

Division	**Officer**	**Direct Telephone Numbers switchboard 0191 232 8520)**
Public Safety and Regulation	Ed Foster, Head of Public Safety and Regulation Jonathan Bryce – Licensing Gillian Danskin – Gambling	211 6132 2777816 211 5079
Legal Services	Rebecca Atkinson – Senior Solicitor Kerry Walker- Solicitor	211 5114 211 5176
Democratic Services	Linda Scott – Service Manager Democratic Services	211 5159

APPENDIX B

ANNUAL RETURN

LICENSING COMMITTEE PROTOCOL

I confirm that I have made all appropriate declarations of interest over the municipal year [ ] to [ ]

OR

I have not had to make any declarations of interest over the municipal year [ ] to [ ]

..... (signature)

(date)
.....

This form is to be returned to the Service Manager Democratic Services before the end of each municipal year. The forms will be held in the Service Manager Democratic Services' office and open to public inspection.

APPENDIX C

GUIDANCE ABOUT LOBBYING

(a) Lobbying of Licensing Committee Members:

(i) A Member of Licensing Committee who is lobbied before the meeting:-

- May listen to what is being said.
- Should refer the lobbyist to the relevant Licensing Enforcement Officer for advice on Licensing Act procedures and their right if any to make formal representations.
- Should not give details of voting intentions or otherwise enter into a commitment to oppose or support the application.
- Should report all instances of significant, substantial, or persistent lobbying to the Head of Public Safety and Regulation.

There is no problem about listening to a point of view. If, however, members of Licensing Committee express an opinion, without hearing the alternative view, it may create the impression that members have pre-judged the matter and will not approach the matter with an open mind on its merits at the Committee.

(ii) Members of Licensing Committee should avoid entering any premises or site in connection with an application unless part of an organised site visit. However, members may sometimes be asked by constituents to visit them in their homes, and on those visits the question of a licence application (or objection or support) may be raised. In such circumstances, members should not give any commitment.

(b) Lobbying of other members

While recognising that lobbying of members has an important role in the local democratic process, all other members should ensure that their response is not such as to give reasonable grounds for suggesting that the decision has already been made by the Council.

(c) Lobbying by Licensing Committee members:

(i) Members of Licensing Committee should not directly or indirectly organise support or opposition, lobby other members, act as an advocate, or put pressure on officers for a particular recommendation or give instructions to officers about any application. Members are also reminded of their obligation under Paragraphs 2 and 3 of the Code of Conduct for Members (Part 5.2A of the Newcastle Charter). An extract from the Code of Conduct for Members is included at Appendix D.

(ii) If members of Licensing Committee engage in such conduct, it will be apparent that they have prejudged the application and are incapable of dealing with the matter with an open mind. If members find themselves in such a situation, they should withdraw from the Committee for that item.

(d) Lobbying by members not on Licensing Committee

(i) All other members should generally follow the principle set out in section (c) and do nothing to affect the integrity of the licensing system; in particular, they should not put pressure on officers for a particular recommendation or give instructions to officers about any application. Members are also reminded of their obligation under Paragraphs 2 and 3 of the Code of Conduct for Members (Part 5.2A of the Newcastle Charter). An extract from the Code of Conduct for Members is included at Appendix D.

(ii) Members should consider carefully what effect on the integrity of the licensing process any action they take may have (such as the circulation of correspondence to members). If members receive correspondence about an application, they should copy it to the Head of Public Safety and Regulation rather than directly to members of Licensing Committee. This ensures that the information appears on the appropriate file.

(iii) Ward members have a number of important roles in licensing matters:-

- informative - making sure that their constituents are aware of licensing matters in the Ward.
- representative - if requested by an ‘other person’ or ‘interested party’ he/she should ensure that party’s views are brought to the attention of the Licensing Committee. It is important to note that in relation to the Licensing Act 2003 members can also make representations without being requested to do so by a constituent, by virtue of their position as ward councillor.
- advocacy - speaking for those who feel unable to speak on their own behalf.

Care must be taken to ensure that a member's actions are not misunderstood. A number of steps can prevent this:-

- information that is distributed should be factually correct.
- where a member is asked to represent conflicting views on a specific application, he/she should ensure that all views are represented.
- an impression should not be created that the member is conducting a campaign in support or opposition to an application.
- other members should not be lobbied.

APPENDIX D

EXTRACTS FROM OTHER CODES AND PROTOCOLS

GENERAL CONDUCT

Paragraphs 2 and 3 of the Code of Conduct for Members (Part 5.2A of the Newcastle Charter):

"2. You must not bully any person (including specifically any Council employee), and you must not intimidate or improperly influence, or attempt to intimidate or improperly influence, any person who is involved in any complaint about any alleged breach of this code of conduct."

"3. You must not do anything which compromises or is likely to compromise the impartiality of anyone who works for or on behalf of the Council."

PRESS COMMENTS

Paragraph 20 of the Protocol - Member/Officer Relations (Part 5.4A of the Newcastle Charter):

"20. PR Issues

20.1 The guiding principles about the publication of publicity material and the issuing of press releases by Officers are found in the Local Government Act 1986 and the revised Code of Recommended Practice on Local Authority Publicity. This prohibits Council from publishing any material which seems designed to affect public support for a political party.

20.2 Publicity should not be party political.

20.3 Official news releases and official press statements should only be sent out through the Press Office in the Communications and Engagement team*.*

20.4 Any interviews to be given by a Member (where he or she is to appear as a Council spokesperson) should be managed by the Press Office in the Communications and Engagement team*."*