

To: Licensing and Gambling Acts Committee

Date: 28 May 2012 **Item No:**

Report of: Head of Law and Governance

Title of Report: Ward members on licensing Sub Committee

Summary and Recommendations

Purpose of report: To seek agreement to the removal of the restriction preventing ward members from sitting on licensing hearings concerning applications for premises within the members own ward.

Report Approved by:

Finance: James Marriot

Legal: Head of Law and Governance

Policy Framework: Statement of Licensing Policy 2011- 2014

Recommendation(s):

Committee is recommended to agree the removal of the current convention of disqualifying members from sitting on Licensing & Gambling Act Casework Sub Committees to determine applications which concern premises within their own ward.

Background

1. When selecting members for licensing casework sub committees the Council currently operates a blanket disqualification of ward members from deciding applications concerning premises within their own ward. This disqualification has been applied since 2005 when the Council first took on the licensing responsibilities set out in the Licensing Act 2003. The rule was originally applied as a safeguard to help avoid accusations of pre-

determination and ensure ward members remain free to represent their constituents as 'interested parties'.

2. It appears that the rule derives from some guidance notes on licensing published by LACORS (Local Authority Coordinators of Regulatory Services) which is part of the Local Government Association. However, even within that guidance the restriction on ward members is discretionary and a matter for each licensing authority to decide for itself. The restriction is not a legal requirement, there is no provision in the Licensing Act 2003, in case law, or Home Office guidance which requires a restriction on ward members, nor is it mentioned in the Council's own Statement of Licensing Policy or Constitution. The restriction has been applied as a matter of convention rather than as a legal or constitutional rule.
3. The underlying principles relating to suitability of members for sub committees are those of personal and prejudicial interests, as set out in the Members Code of Conduct, and the risk of *apparent bias or pre-determination*. The current test for *apparent bias* is whether a *fair minded observer aware of all the facts would conclude there was a real possibility of bias*. Members should be awake to these principles and consider their position in each case when volunteering for sub committees. However, they are matters best dealt with on the facts of each case and not necessarily by way of a blanket ward member disqualification.

Relevant Considerations

4. In a number of recent licensing hearings the ward member disqualification has created difficulties in convening a quorate sub committee and led to unnecessary delay where there was in fact no reason for the relevant member to be disqualified.
5. Being ward member does not in itself constitute an interest in an application or create a risk of *apparent bias*. Providing there is no reason to indicate any interest or risk of bias a ward member's local knowledge may in fact give an additional insight to an application and its implications on the licensing objectives.
6. Restrictions on the make up of sub committees should be based on genuine reasons. Unless a genuine need for the blanket disqualification on ward members can be shown it should be removed.
7. One of the original grounds for the restriction as set out in the LACORS guidance was to allow ward members the freedom to represent their 'interested party' constituents. However, amendments to the Licensing Act now mean that all members of the Council, whether ward member or not, may make representations on licensing applications.

8. For reasons of *apparent bias* a member who makes a representation on an application or who represents an interested party may not also sit on the sub committee to decide that application.

Financial Implications

9. There are no financial implications arising from the recommendation. The Council has a statutory duty to determine licensing applications and application fees are fixed by law.

Legal Implications

10. The current disqualification of ward members is not a legal requirement, nor is it covered in the Constitution or Statement of Licensing Policy. Therefore, there is no legal process required to remove it.
11. The legal principles in relation to apparent bias and members interests should be addressed on the basis of the facts in each case.
12. Members should consider their position in relation to each application when volunteering and may seek advice from the Head of Law and Governance if in any doubt.

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Background papers: none

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