

# INTRODUCTION

## GENERAL LICENSING TEAM FUNCTIONS:

- Alcohol / Regulated Entertainment / Late Night Refreshment
- 23 ■ Betting & Gaming
- Sex Establishments
- Taxi & Private Hire

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# LICENSING TERMINOLOGY

Some brief explanations of some of the jargon used in this presentation:

**Designated Premises Supervisor (DPS):** Person in charge of the day to day running of a venue selling alcohol.

**Interested Parties:** Elected Members, general public.

**Representation:** Objection to an application.

**Review:** To consider the reasons for the change / continuation of a licence following enforcement actions.

**Responsible Authorities:** Professional bodies (Licensing Authority, Police, Environmental Health, etc.).

**Revoke:** Take away permanently

**Suspend:** Take away temporarily



# OUR OBJECTIVES FOR TODAY

The aim of this training is to provide you with a practical approach to help you better understand the role of “Licensing” within the Council and the city, and to prepare you for your duties as Members of the:

- Licensing & Gambling Act Committee
- General Purposes Licensing Committee

<sup>25</sup> In order that you are able to provide Officers with a steer when it comes to developing licensing policies to best serve your constituents; and to assist you in making informed decisions on applications put before you at the:

- Licensing Act 2003 Sub-Committee
- Gambling Act 2005 Sub-Committee
- Hackney Carriage & Private Hire Sub-Committee
- Licensing & Registration Sub-Committee



# PURPOSE OF THE LICENSING AUTHORITY

What is the purpose of Licensing?

The purpose of “Licensing” is to ensure that those who seek to carry out various business activities undergo a “due diligence” process to assess “suitability”, and if then permitted to hold a licence, can be regulated by the Licensing Authority in accordance with the relevant legislation applicable, and as such, promote what are known as “licensing objectives”.

In effect, what we are doing is ensuring that anyone that seeks to hold, continue to hold or renew a licence is “fit and proper” to do so.

In doing so, our main objective is to protect the public and promote the Councils aims and vision, by way of nationally and locally devised criteria.



# LICENSING COMMITTEES

In order for us to carry out our Licensing functions, the Council constitution provides for two Licensing Committees:

Licensing & Gambling Acts Committee: that deals with:

- Alcohol / Entertainment / Late Night Refreshment (Licensing Act 2003)
- Betting & Gaming (Gambling Act 2005)

General Purposes Licensing Committee: that deals with:

- Sex Establishments (Local Government Miscellaneous Provisions Act 1982)
- Taxi & Private Hire (Local Government Miscellaneous Provisions Act 1976 & Town Police Clauses Act 1984)

This Committee also covers the licensing functions of the Miscellaneous Licensing Team.



# CONSTITUTION

**Constitution: Licensing Act 2003 & Gambling Act 2005**

**Full Council:**

- Sets policies on licensing matters recommended by the City Executive Board.

**City Executive Board:**

- Reviews the recommendation of the Licensing & Gambling Acts Committee and recommends policies to Full Council.

**Licensing & Gambling Acts Committee:**

- Reviews and recommends policies on licensing to the City Executive Board.
- Sets licence fees.
- Appoints a Licensing & Gambling Acts Casework Sub-Committees to determine applications brought before it.



# CONSTITUTION

## Constitution: Sex Establishments / Taxi & Private Hire

### Full Council:

- Sets policies on licensing matters recommended by the City Executive Board.

### City Executive Board:

- Reviews the recommendation of the General Purposes Licensing Committee and recommends policies to Full Council.

### General Purposes Licensing Committee:

- Reviews and recommends policies on licensing to the City Executive Board.
- Sets licence fees.
- Appoints a Licensing & Registration Sub-Committee to determine Sex Establishment applications brought before it.
- Appoints a Hackney Carriage & Private Hire Licensing Sub-Committee to determine Taxi and Private Hire cases brought before it.



# LICENSING OFFICERS

## Licensing Officers:

The Officers carry out the following functions:

- Facilitate and scrutinise applications
- Consult on applications
- Grant licences when no negative matters have arisen
- 39 ▪ Carry out proactive checks of licence holders (day and night)
- Carry out reactive checks of licence holders (day and night)
- Benchmark nationally and internationally seeking Best Practice initiatives
- Liaise with Central Government and professional bodies
- Prepare and present reports / policies Members
- Promote and engage in multi-partnership working





# LICENSING POLICIES

## Current Licensing Policies:

- **Statement of Licensing Policy (Licensing Act 2003):** renewed every 5 years (incl. Special Saturation Policies)
- **Statement of Gambling Licensing Policy (Gambling Act 2005):** renewed every 3 years. (incl. No Casino Resolution)
- **Hackney Carriage & Private Hire Driver Criteria and Conditions:** amended as and when required.
- **Hackney Carriage & Private Hire Vehicle Criteria and Conditions:** amended as and when required.
- **Private Hire Operator Criteria and Conditions:** amended as and when required.
- **Policy on the Relevance of Warnings, Offences, Cautions & Convictions (Taxi & Private Hire):** amended as and when required.
- **Hackney Carriages: Quantity Control:** renewed every 3 years
- **Resolution of Sexual Entertainment Venues “Relevant Locality”:** amended as and when required.



# LICENSING POLICIES

**What these Policies / Resolutions for:**

**The Policies and Resolution on the previous slide, provide all those who engage in the licensing process in Oxford with transparency and guidance as to how the Licensing Authority will carry out its functions in determining applications, and those who are brought before any of the Sub-Committees.**

**When devising our policies, Officers and Members should work together to ensure that what is drafted meets with the Councils visions of making Oxford a world-class city, and the corporate objectives that are in place, and takes into account any guidance provided by Central Government.**

**Officers provide reports to both Committees to determine policies, including consultation responses to draft policies.**



# GUIDANCE FOR ELECTED MEMBERS

## Members of the Licensing Committees:

If you are elected to be a Member sitting on either the Licensing & Gambling Acts Committee and / or the General Purposes Licensing Committee, you must remain impartial to any policy matter heard.

<sup>33</sup> You must declare any “interest” held in relation to a policy matter, and if you do hold an interest that may to the lay person give off any “appearance of bias” you should withdraw from the decision making process.

You must not lobby Officers in relation to individual applications and seek to affect the due diligence process each application must undertake, or any decision eventually made could be judicially reviewed.



# ELECTED MEMBERS: MAKING REPRESENTATIONS

## Elected Members as “Interested Parties”:

Being an elected Member of the Licensing Committees does not preclude you from making “representations” in relation to applications made that are of public knowledge (i.e. Licensing Act 2003, Gambling Act 2005, Sex Establishments).

When making any representation, it must demonstrate how the application if granted would undermine the relevant licensing objectives applicable.

You must not seek to solicit representations from other persons.

Should you make a representation in relation to an application, you cannot then be part of the Sub-Committee that determines that application.



# CASES FOR SUB-COMMITTEES

Type of cases put before a Sub-Committee:

Should you be a member of one of the Sub-Committees, then you will be determining the outcome of one of the two following scenarios:

- An application which is the subject of representations made by Officers, Interested Parties, Responsible Authorities; or
- An application for a Review of a licence following enforcement action taken by Officers against the licence holder, or the licence holder has been cautioned or convicted for a relevant offence.

Your overriding consideration when determining any case, is what actions are required to promote the licensing objectives, or does allowing the licence to be granted / retained putting the public at risk.



# LICENSING OBJECTIVES

What are Licensing Objectives?:

Each licensing function has its own set of licensing objectives whether set by Central Government or ones that the Licensing Committees have set locally where legislation permits.

<sup>36</sup>By applying these objectives to any of the cases that may be put before you, and ensuring that any decision you make is necessary and proportionate to promoting the licensing objectives, you will be acting correctly.

So far we have covered the licensing functions of the General Licensing Team by grouping them together, but now we must look at each function separately, in order to raise your understanding and awareness for when the time comes that you have to make decisions on individual cases.



# LICENSING ACT 2003: ALCOHOL / REGULATED ENTERTAINMENT / LATE NIGHT REFRESHMENT

What is covered by the Licensing Act 2003:

The facilitation of applications for, and the enforcement of:

- Premises Licences (seeking permission to provide, add or extend “licensable activities”) (licence lasts until surrendered or revoked):
  - Night Clubs / Pubs
  - Restaurants / Cafes
  - Cinemas / Theatres
  - Community Centres / Halls
  - Members Clubs (known as Club Premises Certificates)
- Ad hoc extensions of hours for licensable events at licensed / any licensable activity at an unlicensed venues (known as Temporary Event Notices) (last for between 1 & 7 days, maximum of 15 TENS per annum, spread over no more than 21 days)
- Applications for Personal Licence (last until surrendered or revoked)
- Application for a Review of a Licence

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# LICENSING ACT 2003: ALCOHOL / REGULATED ENTERTAINMENT / LATE NIGHT REFRESHMENT

## What are the “Licensable Activities”?:

- Sale of Alcohol
- Regulated Entertainment:
  - Performance of a Play
  - Exhibition of a Film
  - Indoor Sporting Event
  - Boxing, Wrestling, Cage Fighting, Mixed Martial Arts
  - Performance of Live Music
  - Playing of Recorded Music
  - Performance of Dance
  - Entertainment similar to Music and Dancing(many of the above have recently become exempt from the need for a licence if the activities meet with certain criteria)
- Late Night Refreshment (the provision of hot food / hot beverages after 11pm or before 5am)

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# LICENSING ACT 2003: ALCOHOL / REGULATED ENTERTAINMENT / LATE NIGHT REFRESHMENT

## Licensing Objectives:

The 2003 Act sets out four licensing objectives, namely:

- Prevention of Crime & Disorder
- Prevention of Public Nuisance
- 39 ▪ Promotion of Public Safety
- Protection of Children from Harm

Applications must include an operating schedule demonstrating the steps that will be undertaken to promote all of the licensing objectives.

All Premises Licences and Club Premises Certificates are subject to Mandatory Conditions specified within the Act.



# LICENSING ACT 2003: ALCOHOL / REGULATED ENTERTAINMENT / LATE NIGHT REFRESHMENT

## Special Saturation Policies (SSP's):

The cumulative impact of the number of licensed premises on alcohol related disorder and anti-social behaviour in different parts of Oxford led to a policy of restricting the expansion of certain types of licensed premises in the City centre and East Oxford areas.

The effect of an SSP is to create a rebuttable presumption that applications for premises licences in these areas will normally be refused although it does not prohibit applications being made.

The SSP's will mainly affect applications for alcohol-led "on sales" venues, because they are more likely to add to the cumulative impact of alcohol fuelled behaviour.



## **LICENSING ACT 2003: ALCOHOL / REGULATED ENTERTAINMENT / LATE NIGHT REFRESHMENT**

### **Special Saturation Policies (SSP's) continued:**

**A relevant representation must have been made during the consultation period of any application for the matter to be referred to the Sub-Committee. If not, then the application must be granted.**

**The applicant is be expected to demonstrate within the application, the steps to be taken to the licensing objectives being undermined (i.e. a “risk assessment).**

**Each case must be judged on its own merit.**

**The policy cannot be retrospectively applied to existing premises and will never be used as a ground for revoking an existing licence or certificate.**



## **LICENSING ACT 2003: ALCOHOL / REGULATED ENTERTAINMENT / LATE NIGHT REFRESHMENT**

### **Representations:**

**Interested Parties and Responsible Authorities may make representations in relation to Premises Licence and Club Premises Certificate applications during their “consultation periods” and as such engage the need for a Sub-Committee Hearing to determine the application.**

**Any representation must detail how the application would fail to uphold one or more of the licensing objectives.**

**On many occasions matters can be resolved without the need for the application to be put to a Sub-Committee through Officers liaising with all parties to find a compromise that is satisfactory to all.**

**However, if any representations cannot be resolved, the application is put before the Sub-Committee to determine.**



# LICENSING ACT 2003: ALCOHOL / REGULATED ENTERTAINMENT / LATE NIGHT REFRESHMENT

## Review of a Premises Licence:

There are two types of Review Applications – “Standard” and “Expedited”.

“Standard” Reviews are very rare, and occur only when all other forms of enforcement actions and partnership working have been exhausted in trying to get a licence holder to uphold the licensing objectives. Any person may apply for a “Standard” Review.

All such “Standard” Review applications must be put out for consultation for a period of 28 days, before then being determined by the Sub-Committee, who may modify / impose additional conditions to a licence, remove licensable activities from the licence, remove the Designated Premises Supervisor, suspend the licence for a period of up to 3 months, or even revoke the licence.

The primary aim of any “Standard” Review is to ensure that the licence or licensee is “fit for purpose”.



## LICENSING ACT 2003: ALCOHOL / REGULATED ENTERTAINMENT / LATE NIGHT REFRESHMENT

### “Expedited” Review of a Premises Licence:

If the Police believe that the sale of alcohol is taking place at a licensed premises associated with serious disorder or serious crime, then a Superintendent can apply for a “Expedited” Review.

The Licensing Authority can decide to take interim steps whilst waiting for a “Standard” Review and these include:

- Modifying the conditions of the licence, excluding the sale of alcohol from the licence, removing the designated premises supervisor from the licence, even suspending the licence.
- An “Expedited” Review takes place very quickly after it is applied for: Within 48 hours, the Authority must give the licence holder a copy of the application and decide what steps, if any, it wishes to take.
- These steps come into immediate effect and cannot be appealed. Within a further 28 days, the Licensing Authority must hold a “Standard” Review and make a further decision on the licence. At this stage, the option of revoking the licence is also available.



## **LICENSING ACT 2003: ALCOHOL / REGULATED ENTERTAINMENT / LATE NIGHT REFRESHMENT**

**What happens if the licence is granted or refused / modified, suspended or revoked?**

**If the licence is granted, it will be attached with Mandatory Conditions set out in the 2003 Act, any conditions as set out in the Operating Schedule of the application, and any conditions imposed by the Sub-Committee.**

**45 If the licence is refused on the grounds that the application would undermine the licensing objectives – this decision can be appealed to the Magistrate Court.**

**If the licence is refused because an irrelevant matter was taken into consideration, or there was an appearance of bias in the make up of the Sub-Committee, the decision can be judicially reviewed.**

**Until any appeal or judicial review is determined, the existing business may still operate as normal.**



# GAMBLING ACT 2005: BETTING & GAMING

## What is covered by the Gambling Act 2005:

The facilitation of applications for, and the enforcement of:

### Premises Licences:

- Casinos (No Casino Resolution)
- Bingo Halls
- 49 ▪ Betting Shops and Tracks
- Adult Gaming Centres
- Family Entertainment Centres

All of the above licences last until surrendered or revoked.

### Permits for:

- Gaming Machines in alcohol licensed premises and members clubs
- Category D machines (the type you get at fun fairs) in unlicensed Family Entertainment Centres

All of the above permits last for 10 years, or until surrendered.





# GAMBLING ACT 2005: BETTING & GAMING

## Licensing Objectives:

The 2005 Act sets out three licensing objectives, namely:

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

Applications must include an operating schedule made accordance with any relevant Guidance or Codes of Practice issued by the Gambling Commission, and be consistent with the three licensing objectives.



# **GAMBLING ACT 2005: BETTING & GAMING**

## **Relevant Considerations:**

**At present there is very little in the way of scope available to the Licensing Authority in relation to applications made under the Gambling Act 2003.**

**It is expected that in the not too distant future, the Gambling Act 2005 will be amended to allow Licensing Authorities more scope as to the number and location of such establishments, in effect allowing Authorities to create “Saturation Policies”.**

**Whilst Interested Parties and Responsible Authorities may make representations in relation to Premises Licence applications and as such engage the need for a Sub-Committee Hearing to determine the application, unless the application would undermine the three licensing objectives, it must be granted.**



# **GAMBLING ACT 2005: BETTING & GAMING**

**What happens if the licence is granted or refused?**

**If the licence is granted, it will be attached with Mandatory Conditions and Default Conditions as set out in the 2005 Act, and any conditions imposed by the Sub-Committee.**

**If the licence is refused on the grounds that the application would undermine the licensing objectives – this decision can be appealed to the Magistrate Court.**

**The licence cannot be refused on the grounds of “locality” or “ volume of similar premises” until the Act is amended.**

**Until any appeal or judicial review is determined, the existing business may still operate as normal.**



# LG(MP) ACT 1982: SEX ESTABLISHMENTS

What is Sex Establishment licensing?:

The facilitation of applications for, and the enforcement of:

- Sex Shops
- Sex Cinemas
- 50 ▪ Sexual Entertainment Venues (SEV)
- Licences last maximum of one year.
- Moral considerations are not relevant.
- Licensing & Registration Sub-Committee only convened if a relevant representation is made.
- Following matters are relevant:
  - Suitability of the Applicant & Business Owners
  - Suitability of the Premises & its Location



# LG(MP) ACT 1982: SEX ESTABLISHMENTS

## Premises & Location (“Relevant Locality”):

The Council Resolution of 10<sup>th</sup> June 2010 states:

Applications made for a Sexual Entertainment Venue (SEV) Licence will not generally be deemed to be appropriate if the premises is near or in locations or areas containing any of the following:

- (i) Historic buildings or tourist attractions
- (ii) Schools, play areas, nurseries, children's centres or similar premises
- (iii) Shopping complexes
- (iv) Residential areas
- (v) Places of Worship

The same consideration is applied automatically under the 1982 Act to Sex Shops and Sex Cinemas, the Resolution simply ensured that the same criteria is applied to SEV's.



# **LG(MP) ACT 1982: SEX ESTABLISHMENTS**

**What happens if the licence is granted or refused?**

**If the licence is granted, it will be attached with locally set Standard Conditions applicable to licences for Sex Establishments, within which are specific conditions applicable to the nature of the business, and any conditions imposed by the Sub-Committee.**

**If the licence is refused on the grounds that the applicant and / or business owner is not a “fit and proper” person – this decision can be appealed to the Magistrate Court.**

**If the licence is refused on the grounds of “relevant locality” then the only course of redress for the applicant is by way of judicial review to the High Court.**

**Until any appeal or judicial review is determined, the existing business may still operate as normal.**



# LG(MP) ACT 1976 & TPC ACT 1847: TAXI & PRIVATE HIRE

## What is Taxi & Private Hire licensing?:

The facilitation of applications for, and the enforcement of:

- Hackney Carriage / Private Hire Drivers
- Hackney Carriage / Private Hire Vehicles
- Private Hire Operators

⌘ Licences last maximum of one year.

- Hackney Carriage & Private Hire Licensing Sub-Committee convened in relation to the following matters are relevant:
  - Suitability of the Applicant & Business Owners
  - Suitability of the licence holder to continue to hold an existing licence

The Policy on the Relevance of Warnings, Offences, Cautions and Convictions sets clear guidelines for the Sub-Committee to work within, and assists them with the decision making process.



## LG(MP) ACT 1976 & TPC ACT 1847: TAXI & PRIVATE HIRE

### Relevant Considerations:

*“Public safety is paramount, whether it is to prevent direct danger to the passenger from the driver of the vehicle or a slightly less direct danger to the passenger and other members of the public from the vehicle itself or the way the vehicle is driven.” James Button.*

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Our locally set “Licensing Objectives” are:

- The safety and health of drivers and the public;
- The promotion of a professional and respected Hackney Carriage and Private Hire trade;
- To prevent crime and disorder and to protect consumers;
- Improve the local environment, economy and quality of life; and
- To promote the aims and vision of Oxford City Council and its Partners.





## **LG(MP) ACT 1976 & TPC ACT 1847: TAXI & PRIVATE HIRE**

### **Safeguarding (Human Trafficking and Child Sexual Exploitation):**

**Everyone is now aware of the well-publicised issues relating to Child Sexual Exploitation and Human Trafficking that have occurred throughout the country.**

**The Licensing Authority has a duty to ensure that the Taxi and Private Hire Trade understand this subject, and assist the Authority in protecting those who are vulnerable and / or being exploited.**

**55** Contained within the Hackney Carriage & Private Hire Driver Licence Application Pack is a page devoted to helping license holders and new applicants to have an awareness of this subject, and questions relating to this subject are posed within the Local Knowledge Test that all new applicants must undertake as part of the criteria for the grant of a licence.

**The Casey Report in relation to the Rotherham Serious Case Review made a number of recommendations for that Council to adopt in relation to vetting applicants and those renewing a licence. We implemented these same requirement in March 2011, and added the Safeguarding requirements in June 2014.**



## LG(MP) ACT 1976 & TPC ACT 1847: TAXI & PRIVATE HIRE

### Options available to the Sub-Committee:

The Sub-Committee has a number of steps available to it including:

- Granting or refusing an application
- Adding additional conditions to a licence
- Issue a Councillor Warning (to be added to Policy)
- Suspend a licence
- Revoke a licence

The test in any Hearing is whether or not the applicant is “fit and proper”. Within our Policy it states:

*A person who poses no threat to the general public, has a good knowledge of the City, is healthy, and is of a good character (including driving record) will be deemed fit and able to hold a licence.*



## **LG(MP) ACT 1976 & TPC ACT 1847: TAXI & PRIVATE HIRE**

**What happens if the licence is granted or refused / suspended or revoked?**

**If the licence is granted, it will be attached with locally set Standard Conditions applicable to the type of licence applied for, and any additional conditions imposed by the Sub-Committee.**

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**If the licence is refused, suspended or revoked on the grounds that the applicant and / or business owner is not a “fit and proper” person – this decision can be appealed to the Magistrate Court.**

**Any person aggrieved by the decision of the Sub-Committee is entitled to appeal within 21 days of the decision, and may continue to work as if the licence were still in effect until the determination of their appeal.**



## **LG(MP) ACT 1976 & TPC ACT 1847: TAXI & PRIVATE HIRE**

### **Immediate Suspension / Revocation:**

The legislation relating to Taxi & Private Hire allows for the immediate suspension or revocation of a driver on the grounds of public safety (i.e. offences of dishonesty, indecency, violence, or any other reasonable cause).

**5** In such cases, no appeal may be heard until the suspension is lifted, and owing to the severe hardship that such an immediate action may have on a licence holder, the Officers seek a full incident report from the Police and a recommendation from the Police that the individual poses a threat to public safety.

The power to take such action is delegated to Officers.

Officers are delegated similar powers in relation to Vehicle licences when a vehicle is deemed unfit for purpose, and no suspension will be lifted until the vehicle has been fully reassessed by way of a Certificate of Compliance Test to ensure that the vehicle adheres to all of the criteria and conditions set down by the Authority.



# SUB-COMMITTEE HEARINGS

*“The licensing function of a licensing authority is an administrative function. 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 a power delegated to the people as a whole to decide what the public interest requires.” Hope & Glory, CA (2011).*

59 Ahead of any Sub-Committee Hearings you will have been provided with a report from Officers, detailing the case and the relevant considerations. An Officer will present a summary of the report at the Hearing.

At the Hearings you will hear from the applicant and those making representations, and you may put questions to them. Some matters will be raised that are not relevant and should not be taken into consideration as there will be other primary legislation that deals with such issues.



# SUB-COMMITTEE HEARINGS

Having heard from all parties, you will ask each party to further sum up their cases for and against the application.

Throughout the Hearing, you should note any relevant findings of fact and (where appropriate) the inferences drawn from these findings, and set out any causes of concern.

Then comes the time for all parties, save for the Sub-Committee, the legal advisor to the Sub-Committee and the clerk to the Sub-Committee to leave the room, and allow the Sub-Committee to consider the case and to reach its decision.

The legal advisor will draw to your attention any relevant matters from the Statement of Licensing Policy and any Central Government Guidance, to assist you with your decision making.



# DETERMINING CASES

Having retired to consider the case, you and your fellow Sub-Committee Members should have at the front of your mind the following when determining what action to take and whether to impose any conditions above and beyond those already proposed by the applicant in his / her Operating Schedule , or in the case of Taxi & Private Hire any recommendations made by the Officers (contained within the report):

- ① Evidence: Are you satisfied that the issues raised are proven or very likely to be realised if left unchecked?
  - Enforceable: Is it within the control of the licensee to comply with the condition, and are Officers reasonably able to check compliance with the condition?
  - Clear & Unambiguous: The conditions should not be open to misunderstanding, or require further efforts to be undertaken to ensure adherence to them.
  - Policy: Have you departed from the Policy guidance? If so, you must state your reasons for doing so.
  - Proportionality: No more is needed than is necessary to avoid the identified risk.



# DETERMINING CASES

What is Proportionality?:

Proportionality is defined as requiring that measures:

*“... are appropriate and necessary in order to achieve the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued.”*

Case C331/188, R v MAFF, ex p. FEDESA [1990] E.C.R. I-4023 (This passage has been cited with approval by Bingham LCJ in R v SS Health ex p. Eastside Cheese [1999] 3 C.M.L.R. 123 and by Laws LJ in R v Gough [1993] A.C. 646, HL.





# DECISION NOTICES

*“The statutory duty of the licensing authority to give reasons for its decision serves a number of purposes. It informs the public, who can make their views known to their elected representatives if they do not like the licensing sub-committee’s approach.*

*It enables a party aggrieved by the decision to know why it has lost and to consider the prospects of a successful appeal.*

*If an appeal is brought, it enables the magistrates’ court to know the reason which led to the decision. The fuller and clearer the reasons, the more force they are likely to carry.”*

Hope & Glory CA (2011).



# DECISION NOTICES

The legal advisor to the Sub-Committee will draft a Decision Notice that is sent out to all parties to the Sub-Committee following approval by the Chair of the Sub-Committee.

The Decision Notice will list:

- The persons in attendance at the Hearing
- A summary of each parties case / representation
- The matters deemed relevant by the Sub-Committee
- The decision of the Sub-Committee
- Any conditions that have been reached by agreement
- Any additional conditions imposed by the Sub-Committee
- Any Rights of Appeal



# INTERACTIVE SESSION

We are now going to look at some partially real and partially fictitious examples of Sub-Committee cases.

Having reviewed each brief scenario presented to you, consider what the application is seeking, and consider the additional information provided.

65 When considering each scenario, refer to the relevant Licensing Objectives / Policy considerations, take in the concerns raised by objectors, consider what may or may not be relevant.

At the end of each scenario, you will be asked to disclose what decision you had reached (i.e. whether to grant, modify, refuse), what the relevant issues were, and what, if any, additional conditions would be necessary and appropriate to promote the relevant licensing objectives.



# SCENARIO 1

Licensing Act 2003:

Little Waitrose: New grocery store opening, seeking to provide an off-licence within the store. Site used to be a pub, but since closed down due to lack of trade despite being the centre of a densely populated residential area.

Application for a New Premises Licence: Sale of Alcohol (off sales only) 6am – 11pm daily.

One objection from Ward Member has been received stating that the premises is close to a school and that children will try and buy alcohol. Member is also worried that at night anti-social behaviour will occur as people will linger outside the shop drinking in the streets.



# SCENARIO 2

Licensing Act 2003:

**Mulberry Bush Inn:** Previously defunct premises now reopening. Outside of main city centre SSP area, but located in a residential area.

**Application for a New Premises Licence:** Sale of alcohol (on and off sales) 10 – 3am daily, Recorded Music (indoors and outdoors) 6pm – 2am daily.

Various objections from residents received relating to potential noise and anti-social behaviour issues, Objection from Police who claim the hours sought will encourage many to try and go there in the early hours, leading to disorder at closing time. Objection from EHO about noise caused by people and music outdoors.



# SCENARIO 3

Licensing Act 2003:

Taco Taco Restaurant: Busy modern fast food style restaurant / takeaway located in city centre SSP area, but also located in a residential area.

Application to Vary a Premises Licence: Sale of alcohol (on and off sales) and Recorded Music (indoors only) extended from 11pm to 2am, Late Night Refreshment (indoors and outdoors) to be extended from 11pm to 2am daily.

Various objections from local residents received relating to potential noise and litter issues, and that people will take their drinks into the residential area. There are already parking problems, and the extra hours may lead to more people wanting to go there causing greater congestion and parking problems.



# SCENARIO 4

## Taxi & Private Hire:

**New Driver Application: Has convictions for being caught with drugs in 2004, 2005, 2008, 2012 (all for personal use only) and for theft in 2009.**

**He has passed all of the other criteria set by the Council in the application process.**

**Applicant is currently unemployed, this will be his source of income, and has a wife and 5 children to support. One of the larger Operator companies has promised him work if he gets the licence.**

**Consider the Policy on the Relevance of Warnings, Offences, Cautions and Convictions, and having done so, is he “fit and proper”?**



# SCENARIO 5

## Taxi & Private Hire:

**Renewal of Driver Application:** When renewing the application, relevant information comes to light about an undeclared caution for a violent offence in 2013, but he was not using his licensed vehicle when the offence occurred.

The driver has failed to inform the Authority at the time the caution was issued. Claims at the Sub-Committee Hearing that the Police told him it wouldn't affect his work as a taxi driver.

He has no previous enforcement history undertaken against him.

Consider the Policy on the Relevance of Warnings, Offences, Cautions and Convictions, and having done so, is he “fit and proper”?





# SCENARIO 6

## Taxi & Private Hire:

Officers have concerns about an existing Driver: Officers have issued a number of Warnings to a driver relating to him being witnessed to commit various road traffic offences, and in the last 8 years a significant number of complaints have been received about him overcharging passengers especially for journeys terminating outside of Oxford.

The driver is a 67 year old Asian male, English is not his first language, and he has held a licence with the Authority for over 30 years. The local MP is a very close friend of his, and has provided a character reference stating that the driver is the spokesperson for the Asian community and any action taken against him may play poorly in the national media, potentially costing the party vital votes at the upcoming election.

What decisions could you take and why?



# SCENARIO 7

## Taxi & Private Hire:

Officers have successfully prosecuted a Private Hire Driver who committed the offences of “plying for hire” and “driving without insurance” whilst they were carrying out a “Test Purchase” Operation.

The driver was fined £400 for the offences and his DVLA Licence endorsed with 6 penalty points.

The driver claims it was a set-up, and that one Officer has it in for him, as this particular Officer has issued the driver with a number of Warnings for various non-compliance matters, and the driver insists that the Officer is racist and has threatened to “make sure the driver loses his licence”.

Consider the Policy on the Relevance of Warnings, Offences, Cautions and Convictions, and having done so, is he “fit and proper”?



# SCENARIO 8

## Sex Establishments:

**Application for the renewal of a Sexual Entertainment Venue licence:** Located on the Bowlplex site next to the Oxford United football stadium and deemed at last renewal to be in a suitable location. Open between 9pm and 3am daily.

There are many objectors. Some claim that lap-dancing is degrading to women, others claim that the venue allows prostitution, and a local Christian group has submitted a petition against the application because it goes against the sanctity of marriage. The Chief Constable has objected on the grounds that many reports have been made to the Police about disorder around the venue, however the Council Licensing Officers are not aware of any such issues and the Police have not provided any evidence supporting their objection.

**What decision would you take and why?**



AND FINALLY.....

**Any questions?**

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