



Adur Licensing Committee
16 January 2017
Worthing Licensing and Control Committee A and B
30 January 2017
Agenda Item No.

Ward: all in Adur and Worthing

Key Decision: No - Not Executive

Constitutional Provisions relating to the Councils' Licensing Function

Report by the Solicitor to the Council and Monitoring Officer

1.0 Summary

- 1.1 The function of Licensing, being regulatory in nature, falls outside of the Joint Committee Agreement, and the partnership working between Adur District Council and Worthing Borough Council. Consequently, each Council retains responsibility for its own licensing function and operates its own Licensing Committees.
- 1.2 Constitutional and procedural arrangements relating to Licensing at Adur District Council and Worthing Borough Council vary significantly and this report provides an opportunity for governance arrangements and procedure rules to be reviewed; it is an opportunity to streamline procedures and to combine best practice from both Authorities.

2.0 Background

2.1 Worthing Borough Council Licensing Committees

- 2.1.1 Worthing Borough Council currently has 2 Licensing Committees, known as 'Licensing Control Committee A' and 'Licensing Control Committee B'. Committee A deals with all licensing matters other than those under the Licensing Act 2003 and the Gambling Act 2005; in reality much of the work of Committee A surrounds hackney carriages and private hire vehicles. Committee B on the other hand deals with licensing matters under the Licensing Act 2003 and the Gambling Act 2005 and in reality its work concerns premises license applications, temporary event notices, and gaming club or machine permits.
- 2.1.2 Licensing Committee A sits as a full Committee of 15 appointed Members; it does not have the power to convene a sub-committee. The quorum for Worthing's Licensing Committee A is 4 Members and substitutes to the Committee are permitted, provided they have had appropriate training within the preceding two years.

- 2.1.3 Licensing Committee B sits as a full Committee of 15 Members but also has the power to convene sub-committees of 3 Members, to discharge its functions. Individual applications for premises or gambling licenses are heard by a sub-committee of 3 Members of Committee B, with any review hearings being heard by the full Committee B. The quorum for Worthing's Licensing Committee B is 4 Members, whilst the quorum for a sub Committee is 3 Members. Substitutes on Committee B are not permitted, but substitutes are permitted onto sub-committees of Committee B, from the full Committee.
- 2.1.4 For the current arrangements at Worthing Borough Council see Appendix A.
- 2.2 Adur District Council Licensing Committee
- 2.2.1 Adur District Council currently has 1 Licensing Committee comprising 10 Elected Members. The Committee deals with hackney carriage matters, private hire vehicles, and applications and reviews for premises and gambling applications.
- 2.2.2 The Committee has the power to convene sub-committees comprising 3 Elected Members. The sub-committees only have the power to deal with specific applications and reviews relating to hackney carriage and private hire vehicles, and appeals against decisions relating to rate relief applications; they do not hear individual applications or reviews relating to premises or gambling matters.
- 2.2.3 The quorum of the Licensing Committee at Adur District Council is currently 3 Members, and the quorum for a Sub-Committee is 3. Substitutes on the Committee are not permitted when considering licensing and gambling matters under the 2003 and 2005 Acts, whereas they are when considering private hire vehicle and hackney carriage matters, (provided they have received appropriate training). As all matters are dealt with by one Licensing Committee at Adur, this potentially results in a substitute to a Committee Meeting being able to act as substitute for part of the Committee meeting only. Substitutes on the Sub-Committee are permitted from the Licensing Committee.
- 2.2.4 For the current arrangements at Adur District Council see Appendix B.
- 2.3 National Non-Domestic Rate Relief Applications
- 2.3.1 At Worthing Borough Council applications for rate relief are dealt with by the Head of Revenues and Benefits, under delegated authority, with an appeal against such decisions to the Executive Member for Resources.
- 2.3.2 At Adur District Council applications for rate relief are dealt with by the Individual Executive Member for Resources with appeals to the Sub-Committee of the Licensing Committee (Licensing Regulatory Sub-Committee). It could be said that this role does not naturally fit with the general work of the Committee and its terms of reference; the skills of the Members are in respect of investigatory hearings rather than rate relief applications.

2.4 Political Balance

- 2.4.1 Licensing Committees are required to be politically balanced in accordance with s101(1) Local Government Act 1972, when dealing with non Licensing Act 2003 and Gambling Act 2005 matters (e.g. when dealing with hackney carriage and private hire vehicle matters). They are not required to be politically balanced when dealing with Premises Licence applications and Gambling applications under the 2003 and 2005 Act. Both Councils' Licensing Committees are politically balanced, (the Membership of Committees A and B at Worthing Borough Council are the same) and compliant with statutory requirements.
- 2.4.2 There is no requirement for Sub-Committees of the Licensing Committees to be politically balanced, although generally, where possible, Officers ensure that they are.

2.5 Executive Members

- 2.5.1 Both Councils' constitutions are silent on whether or not an Executive Member may sit on a Licensing Committee. Worthing Borough Council currently have no Executive Members on their Licensing Committees, whereas Adur District Council have two. The law is unclear on the point.
- 2.5.2 In the case of *MuMu Enterprises (Weston) Limited v North Somerset District Council, 2014*, a premises licence holder became aware during a review hearing that a Member of the Sub-Committee was not a Member of the Authority's Licensing Committee and, further, that he was a Member of the Authority's Executive. An appeal was lodged on the basis that the Committee was unlawfully constituted.
- 2.5.3 The Court held that it was not permissible to substitute a Member onto a Licensing Sub-Committee who was not already a Member of the Authority's Licensing Committee. They concluded that the licensing sub-committee was not lawfully constituted, lacked jurisdiction to hear the review and quashed the decision. The District Judge unfortunately did not go on to consider the challenge brought that the decision should also be quashed on the basis that a Member of the Sub-Committee was also a Member of the Executive.
- 2.5.4 The Local Authorities (Functions and Responsibilities)(England)(Amendment) Regulations 2013 provide that certain local authority functions are not the responsibility of the Executive, and this includes any function of a licensing authority relating to the Licensing Act 2003.
- 2.5.5 It could be argued that whilst licensing cannot be the responsibility of the Executive this does not bar individual Members of the Executive from being appointed to the Licensing Committee. But it could also be argued that those who sit on a Licensing Sub-Committee should not be a Member of the Executive. The point has not been definitively determined by the Courts.
- 2.5.6 The Solicitor to the Councils' advice is that Executive Members should not sit on the Councils' Licensing Committees and that the Council is at risk of a challenge if they

do so. It is clear that Licensing cannot be an Executive function; if Executive Members are able to be appointed to a Licensing Committee, it would be possible for an Authority to circumvent the Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2013 by appointing all Executive Members to the Licensing Committee. This cannot be what Parliament intended and best practice would be to remove the risk and introduce constitutional changes to prevent Executive Members sitting on Licensing Committees.

2.6 Licensing Procedure Rules

2.6.1 Both Councils have a set of Licensing Procedure Rules which differ significantly, and neither form part of the Councils' constitutions.

2.6.2 In Worthing, those individuals who have made representations relating to an application may speak first at a hearing and are questioned, following which the applicant may make representations and is questioned. At the end of the hearing, the applicant sums up, followed by those who have made representations having the opportunity to sum up. It could be argued that this procedure is contrary to the principles of natural justice which should provide for the applicant to have the opportunity of speaking first on their application and also of having the last word of summing up.

2.6.3 In Adur, the applicant is able to speak first at the hearing and is questioned, followed by those individuals who have made representations. Further, at the end of the hearing those having made representations sum up, with the applicant then summing up and having the last word.

2.6.4 Both Authorities allow discretion within their procedure rules for the Chairman to amend the rules for a particular hearing, provided that the principles of natural justice continue to be complied with.

2.7 Appeal to the Magistrates Court

2.7.1 Several decisions of the Licensing Committees (relating to taxi drivers, premises and gambling matters) give rise to an individual having a right of appeal to the Magistrates Court, on certain grounds.

2.7.2 It should be noted that if a decision of the Licensing Committee is challenged by way of an appeal to the Magistrates Court, the matter will be dealt with by the Councils' Legal Officers. It is possible for negotiations to take place and a settlement to be reached as part of those proceedings, which may be inconsistent with the Committee's original decision. Legal Officers have a delegated authority from the Councils to settle proceedings, in appropriate circumstances, and will always be acting in the best interests of the Councils. In such circumstances it is not possible to reconvene a meeting of the Committee, but out of courtesy, attempts will be made to contact the Chairman of the Committee.

3.0 **Proposals**

3.1 Worthing Borough Council Licensing and Control Committees

- 3.1.1 It is proposed that Licensing and Control Committee A at Worthing have the power to set up Sub-Committees of 3 Members of the main Committee for the purpose of hearing individual applications and reviews from hackney carriage and private hire licence holders. The reasons are as follows:

An individual applicant for a private hire or hackney carriage licence, or driver facing review and potential loss of livelihood, who is often unrepresented, may find it very intimidating to have to face a body of 15 Members to make his application; the current procedures may be disproportionate, unnecessary and contrary to the principles of natural justice, and contrary to Article 6 of the Human Rights Act relating to the right to a fair trial;

The current arrangement of the full Committee hearing applications and reviews can lead to the same Members reviewing their earlier decisions and a risk that potentially all Members may be conflicted when sitting to hear a review matter. If the applications and reviews were dealt with by Sub-Committees it could be ensured that the composition of the Sub-Committees differed reducing potential for conflict; and

The Sub-Committee could be more agile when determining applications and reviews with a smaller membership.

- 3.1.2 For proposed arrangements at Worthing Borough Council see Appendix A.

3.2 Adur District Council Licensing Committees

- 3.2.1 It is proposed that at Adur, all specific applications for gambling and premises licence applications are dealt with by a Sub-Committee of 3 Members, rather than the full Committee of 10 Members, for the following reasons:

An individual applicant for a premises licence or gambling licence, may find it very intimidating to have to face a body of 10 Members to make his application and representations; the current procedures may be disproportionate, unnecessary and contrary to the principles of natural justice, and may in themselves lead to grounds for an appeal or challenge; and

The Sub-Committee could be more agile when determining applications with a smaller membership.

- 3.2.2 For proposed arrangements at Adur District Council see Appendix B.

3.3 Quorum

- 3.3.1 It is proposed that the quorum of Worthing Borough Council's Licensing and Control Committees A and B be increased from 4 Members to 5 Members to reflect a third

of the Committee membership rather than a quarter, to ensure fairness of process. It is further proposed that the quorum of Adur District Council Licensing Committee be increased from 3 Members to 4, again to reflect a third of the membership rather than a quarter.

3.3.2 It is proposed that the quorum of both Councils' Sub-Committees be reduced from 3 to 2 Members. The full Membership of each Sub-Committee is 3 Members and having a quorum of 3, does present practical difficulties if a Member should be absent or late, with little notice. The current arrangements necessitate a substitute being on 'stand by' for every meeting, or risking meetings having to be aborted 'on the night'.

3.4 National Non-Domestic Rate Relief

3.4.1 The current arrangements for dealing with National Non-Domestic Rate relief applications are inconsistent. It is therefore suggested that both Adur and Worthing Councils delegate the determination of such applications to the Head of Revenues and Benefits, with a route of appeal against such determinations to each Council's Executive Member for Resources. If this proposal was adopted, such matters would no longer be in the remit of either Council's Licensing Committee, but it would enable decision making to be quicker, more agile and efficient.

3.5 Executive Members

3.5.1 It is advised that each Council amend their constitutions to prohibit Executive Members from sitting on their Council's Licensing Committees.

3.6 Licensing Procedure Rules

3.6.1 It is proposed that the Solicitor to the Council be delegated to draft revised Licensing Procedure Rules, in accordance with the provisions of paragraph 2.6.3 above, and incorporate them into each Council's constitution. The procedure rules would retain the discretion for the Chairman to amend the rules for a particular case where appropriate to do so.

4.0 Legal

4.1 Section 101 Local Government Act 1972 allows the Councils to establish Committees and Sub-Committees to consider private hire and hackney carriage matters. Such committees must be politically balanced.

4.2 Section 6(1) Licensing Act 2003 provides that a Licensing Authority must establish a Committee to deal with premises and gambling licences, amongst other matters, under the Licensing Act 2003 and the Gambling Act 2005, and that its membership must be between 10 and 15 Members. Section 9(1) Licensing Act 2003 states that a Licensing Committee may establish one or more Sub-Committees, consisting of 3 Members of the Committee.

- 4.3 The Councils' constitutions set out the terms of reference of the Council's Licensing Committees and it is proposed they will also include Licensing Procedure Rules in due course. However a Council's constitution or standing orders cannot override the legislative provisions.
- 4.4 The Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2013 which came into force on 1st October 2013 specifies that any function of a Licensing Authority relating to the Licensing Act 2003 cannot be an Executive function.

5.0 Financial implications

- 5.1 With a move towards more of the Councils' licensing function being dealt with by small Sub-Committees rather than full Committees of 10 or 15 Members, there may be a small saving realised by sundry costs relating to printing and postage.

6.0 Recommendation

- 6.1 That both Adur District Council Licensing Committee and Worthing Borough Council Licensing and Control Committee A and B consider the proposals in this report and make comment upon the proposals to the Joint Governance Committee, to be taken into account when considering this matter.

Local Government Act 1972 Background Papers:

The Councils' Constitutions

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Schedule of Other Matters

1.0 Council Priority

1.1 [Set out which of the Council's priorities the proposal meets and how.]

2.0 Specific Action Plans

2.1 (A) [Set out the specific outcomes from the Corporate Plan the proposal is aimed at achieving and how]

(B) [Set out any specific government target the proposal is aimed to achieve]

3.0 Sustainability Issues

3.1 [Details of any sustainability issues, checklist to be completed and submitted to Community Wellbeing]

4.0 Equality Issues

4.1 [Details of any equality issues or how the proposal improves the current position]

5.0 Community Safety Issues (Section 17)

5.1 [Details of how the proposal helps reduce crime and disorder and to meet the Council's duty regards crime and disorder reduction targets]

6.0 Human Rights Issues

6.1 [Does the proposal impinge on anyone's human rights and if so how is it justified under the Human Rights Act? Human rights include:
Right to a fair trial, respect for family life, private life, home and correspondence, freedom of thought, expression, assembly and association and protection and quiet enjoyment of property and possessions. Also ask, is the action proportionate to the anticipated response or outcome?]

7.0 Reputation

7.1 [Is the proposal likely to have an impact on the reputation of the Council(s)]

8.0 Consultations

8.1 (A) [Details of relevant internal (staff UNISON etc) and external (including Stakeholder Groups; etc.) consultation]

(B) Include how have you used the feedback from the consultation in this proposal

9.0 Risk Assessment

- 9.1 [Details of risks of doing or not doing? Are there insurance or public liability issues? Is there a statutory duty on the Council to do what is proposed and what are the consequences of not doing it? Highlight if this report meets an element in the corporate business continuity plan]

10.0 Health & Safety Issues

- 10.1 [Details of any health and safety issues]

11.0 Procurement Strategy

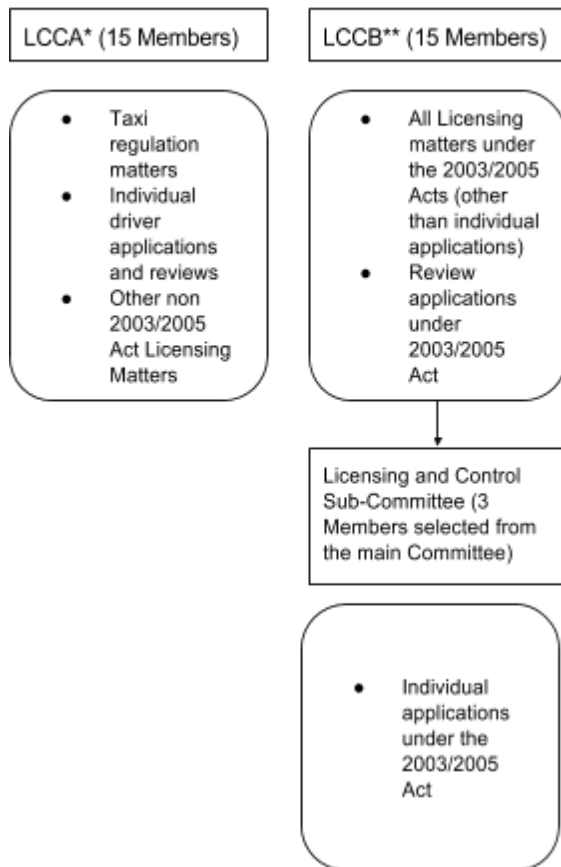
- 11.1 [Confirm that the report complies with the Procurement Strategy or explain why the Strategy had not been complied with. Include how your recommendation meets the strategy making reference to Best Value principles if necessary]

12.0 Partnership Working

- 12.1 [Detail any partnership working the report/proposal seeks to promote]

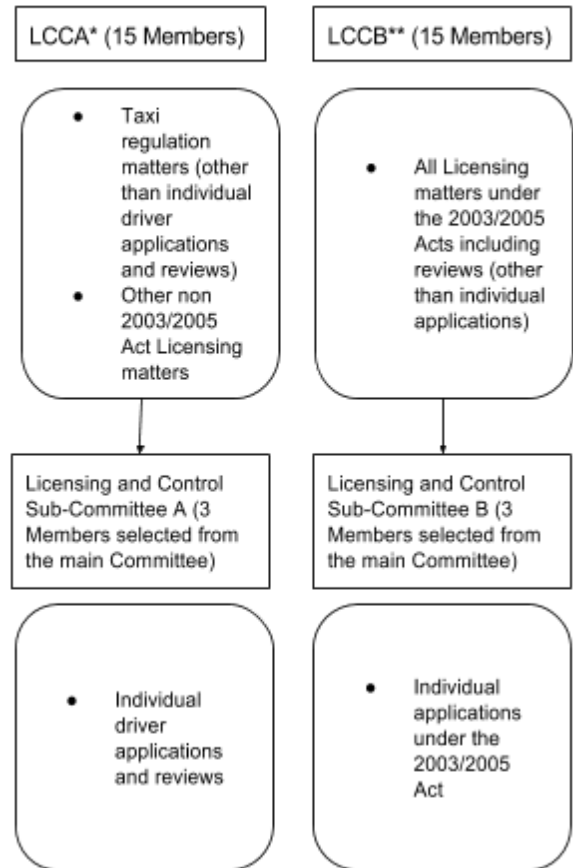
APPENDIX A

WBC LICENSING COMMITTEE CURRENT



*Licensing and Control Committee A

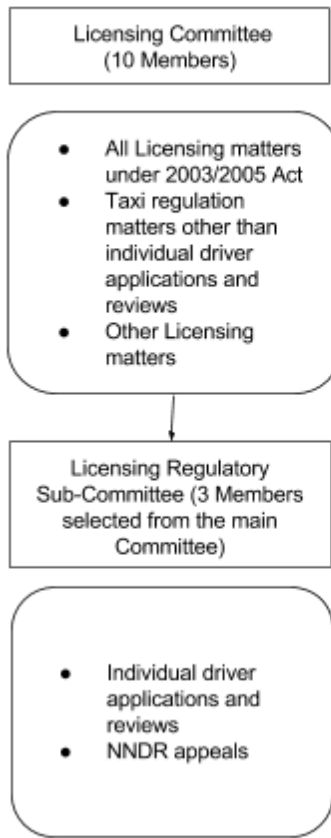
WBC LICENSING COMMITTEE PROPOSED



**Licensing and Control Committee B

APPENDIX B

ADC LICENSING COMMITTEE CURRENT



ADC LICENSING COMMITTEE PROPOSED

