

Constitutional Provisions relating to Adur and Worthing Councils' Licensing Functions

Report by the Solicitor to the Councils 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

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. This Committee sits as a full Committee of 15 appointed Members; it does not have the power to convene a Sub-Committee. The quorum for this Committee is 4 Members and substitutes to the Committee are permitted, provided they have had appropriate training within the preceding two years.

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 licence applications, temporary event notices, and gaming club or machine permits. 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.

For the current arrangements at Worthing Borough Council see Appendix A.

2.2 Adur District Council Licensing Committee

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.

The Committee has the power to convene Sub-Committees comprising 3 Elected Members, but only when dealing 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.

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.

For the current arrangements at Adur District Council see Appendix B.

2.3 National Non-Domestic Rate Relief Applications

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.

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

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.

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

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.

There are no statutory provisions prohibiting Executive Members from sitting on Licensing Committees. But The Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2013 provide that certain Local Authority functions cannot be the responsibility of the Executive, and this includes any function of a licensing authority, relating to the Licensing Act 2003.

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 if the majority of a Licensing Committee comprises Executive Members, then it is difficult to differentiate it from an Executive function. Without any restrictions in place 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. Best practice would be to mitigate the risk of any challenge by introducing constitutional changes to prevent Executive Members comprising the majority of the membership of either Authority's Licensing Committee.

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 are complied with.

3.0 Proposals

3.1 Worthing Borough Council Licensing and Control Committees

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.

For proposed arrangements at Worthing Borough Council see Appendix A.

3.2 Adur District Council Licensing Committees

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.

For proposed arrangements at Adur District Council see Appendix B.

3.3 Quorum

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.

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

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

It is advised that each Council amend their Constitution to prohibit Executive Members comprising the majority of the membership of any Licensing Committee.

3.6 Licensing Procedure Rules

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.

It is further proposed that the procedure rules include a provision that the Chairman (or Vice Chairman in his/her absence), of the Licensing Committee attend any hearing at the Magistrates Court where a decision of that Committee is being heard by way of an appeal.

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 Consultation

- 6.1 Consultation has been undertaken with both Worthing Borough Council's Licensing and Control Committee A and B, with Adur Licensing Committee, with both Leaders of the Councils and the Adur District Council Executive Member for Resources.
- 6.2 Minutes of the meetings of Adur District Council Licensing Committee and Worthing Borough Council Licensing and Control Committee which considered this matter, are attached as Appendix 1 and 2 to this report.

7.0 Recommendation

- 7.1 That the Joint Governance Committee notes the comments received from both Adur District Council and Worthing Borough Council's Licensing Committees.
- 7.2 That the Joint Governance Committee recommends to Worthing Borough Council:
 - Licensing and Control Committee A establish a Sub-Committee 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 quorum of Worthing Borough Council's Licensing and Control Committees A and B be increased from 4 Members to 5 Members;
- The quorum of Worthing Borough Council's Licensing Sub-Committees be reduced from 3 to 2 Members;
- That Executive Members be prohibited from comprising the majority of the membership of any Licensing Committee;
- That the Solicitor to the Council be delegated the authority to produce Licensing Procedure Rules to be incorporated into the Worthing Borough Council Constitution;
- That the Solicitor to the Council be delegated authority to make any consequential changes to the Worthing Borough Council Constitution arising from this decision.

7.3 That the Joint Governance Committee recommends to Adur District Council:

- The Licensing Committee establish a Sub-Committee of 3 Members of the main Committee for the purpose of hearing gambling and premises licence applications;
- The quorum of Adur District Council Licensing Committee be increased from 3 Members to 4;
- The quorum of Adur District Council's Licensing Sub-Committees be reduced from 3 to 2 Members;
- That the Council delegate the determination of National Non-Domestic Rate Relief applications to the Head of Revenues and Benefits, with a route of appeal against such determinations to the Adur District Council Executive Member for Resources;
- That Executive Members be prohibited from comprising the majority of the membership of any Licensing Committee;
- That the Solicitor to the Council be delegated the authority to produce Licensing Procedure Rules to be incorporated into the Adur District Council Constitution;
- That the Solicitor to the Council be delegated authority to make any consequential changes to the Adur District Council Constitution arising from this decision.

Local Government Act 1972
Background Papers:

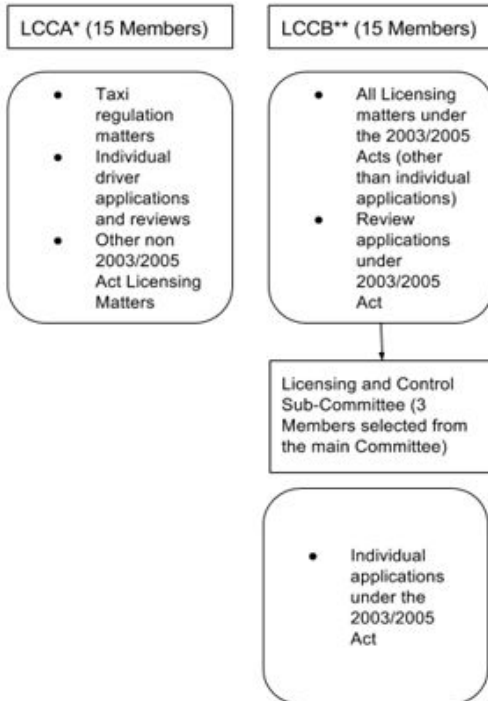
The Constitution of Worthing Borough Council; and
The Constitution of Adur District Council

Contact Officer:

Susan Sale
Solicitor to the Councils and Monitoring Officer
Town Hall
01903 221119
susan.sale@adur-worthing.gov.uk

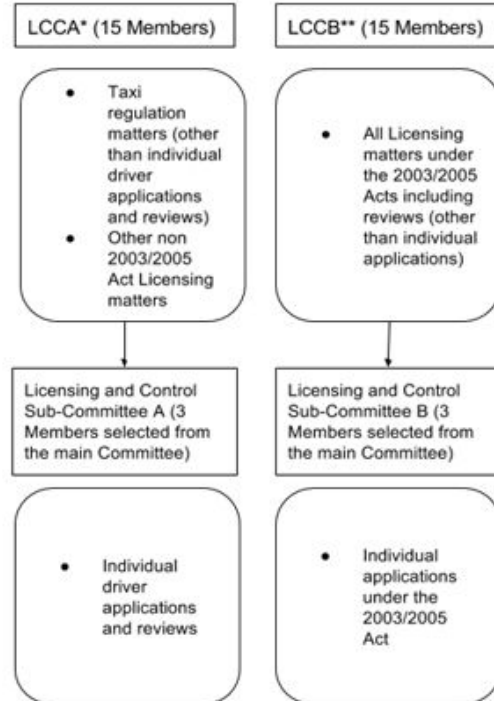
APPENDIX A

WBC LICENSING COMMITTEE CURRENT



*Licensing and Control Committee A

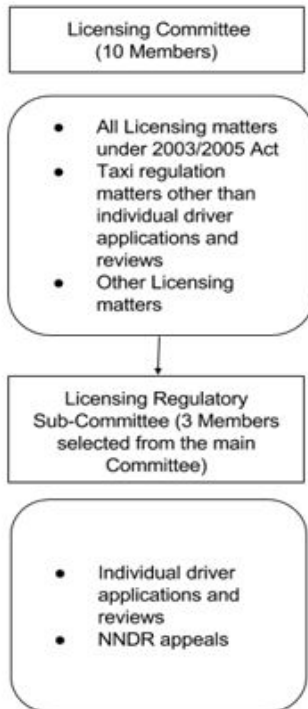
WBC LICENSING COMMITTEE PROPOSED



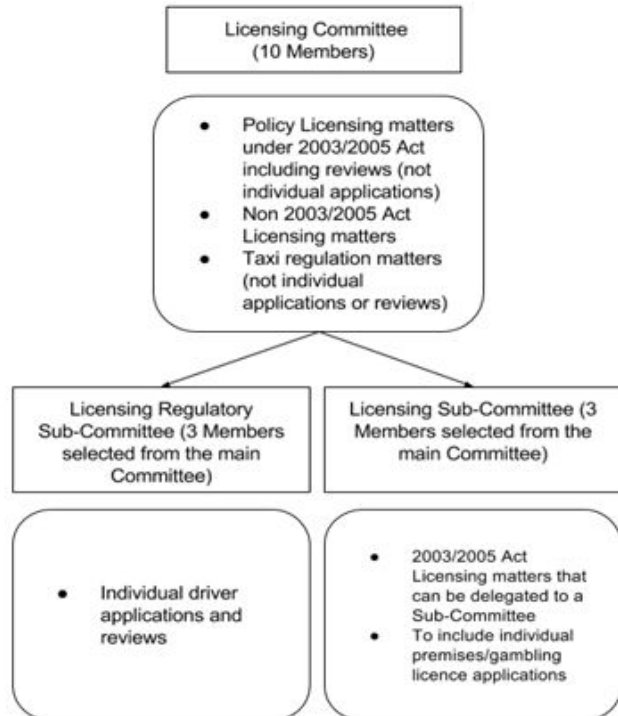
**Licensing and Control Committee B

APPENDIX B

ADC LICENSING COMMITTEE CURRENT



ADC LICENSING COMMITTEE PROPOSED



APPENDIX 1

Extract from Draft Minutes of a Meeting of the WBC Licensing and Control Committee 'A' of Worthing Borough Council

Gordon Room, Town Hall, Chapel Road, Worthing

Monday 30 January 2017

Councillor Paul High (Chairman)

Paul Baker	Susan Jelliss
Keith Bickers	Luke Proudfoot
*Joan Bradley	Jane Sim
Callum Buxton	Bob Smytherman
Edward Crouch	Paul Westover
Lionel Harman	Steve Wills
Joshua High	Tom Wye

*Absent

LCCA/16-17/ 23	Constitutional Provisions relating to the Councils' Licensing Function
<p>Before the Committee was a report by the Monitoring Officer, a copy of which had been circulated to all members, a signed copy of which is attached as item 4. The report before the committee provided an opportunity for governance arrangements and procedure rules to be reviewed; and an opportunity to streamline procedures and to combine best practice from Adur District Council and Worthing Borough Council.</p> <p>The Committee discussed the report and in particular the proposal to introduce sub-committees to deal with taxi and private hire applications and reviews. There was consensus that the full committee provided an opportunity to get the best decision because of the diverse range of skills and opinion contained within a full committee. Members felt that the current structure and working practices of the</p>	

committee were robust and did not need amendment.

Recommendation: that it be recommended to the Joint Governance Committee that:

That the proposals be not accepted and that the current constitutional arrangements be not amended.

APPENDIX 2

**Extract from Draft Minutes of a Meeting of the
Licensing Committee of Adur District Council
Queen Elizabeth II Room, Shoreham Centre
6 March 2017**

Councillor Brian Coomber (Chairman)
Councillor David Simmons (Vice-Chairman)

Councillor James Butcher *Councillor Peter Metcalfe
Councillor Stephen Chipp *Councillor David Lambourne
Councillor Emma Evans Councillor Lyn Philips
Councillor Robin Monk *Councillor Ben Stride

* Absent

LC/16-17/18 Constitutional Provisions relating to the Councils' Licensing Function

Before the Committee was a report by the Solicitor to the Council and Monitoring Officer copies of which had been circulated to all Members and a copy of which is attached to the signed copy of these Minutes as Item 5. The report before the Committee provided an opportunity for governance arrangements and procedure rules to be reviewed; and an opportunity to streamline procedures and to combine best practice from Adur District Council and Worthing Borough Council.

The Monitoring Officer introduced the report to the Committee and outlined proposals therein. With reference to Executive Members being included amongst the membership of the Licensing Committee the Monitoring Officer advised that certain local authority functions are not the responsibility of the Executive. This included any function of a licensing authority relating to the Licensing Act 2003. That being the case the Monitoring Officer told the Committee 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. However, it could also be argued that those who sit on a Licensing Sub-Committee should not be a Member of the Executive and this was the best way to remove all risk of challenge. An alternative option was put forward which was that the constitution be changed to ensure that the Committee be prohibited from including a majority of Executive Members.

The Committee discussed proposals within the report to introduce the use of Sub Committees for 2003 act and 2005 act applications. A Member asked if there had been a successful challenge of a Licensing Committee decision on the grounds that the rules of natural justice had been contravened because of the size of the Committee. The Monitoring Officer told members she wasn't aware of any such case. The general feeling of the Committee was that a full Committee hearing was not unduly overbearing and the use of Sub-Committees would cause difficulties in assuring political balance.

Members discussed raising the quorum of the Committee from three to four Members and agreed that this was reasonable and commensurate with other Committees. However it was felt that reducing the quorum of the Licensing and Regulatory Sub-Committee from

three to two risked the maintenance of political balance and were therefore against that proposal.

Members discussed the proposed changes to the way that National Non Domestic Rate Relief (NNDR) appeals were heard and felt that further comment was needed from the Executive Member for Resources before the Joint Governance Committee make a recommendation on the matter.

In relation to Executive Members being part of the Committee membership, Members agreed that this should not be prohibited on the grounds that they could add valuable experience to the Committee and that the legislation did not prohibit Executive Members from sitting on the Committee, it prohibited the Committee from being an Executive responsibility. Members agreed that it was sensible to recommend that a rule stating a majority of the committee must not be made up of Executive Members so as not to give the impression that the functions of the Committee were being used as an Executive function.

The Committee noted that if a decision of the Licensing Committee is challenged by way of an appeal to the Magistrates Court, the matter would be dealt with by the Councils' Legal Officers. It was possible for negotiations to take place and a settlement to be reached as part of those proceedings, which may have been inconsistent with the Committee's original decision. Members expressed concerned that the intent of the Licensing Committee could be amended post decision. A Member commented that the expectation should be that the decision of the committee is defended in court. The Monitoring Officer explained to Members that a matter would be settled if it was in the Council's interest and that efforts would be made to contact the Chairman or Vice Chairman before such action was taken.

Resolved: that the following be recommended to the Joint Governance Committee:

1. That the majority of the membership of the Licensing committee is not made up of Executive Members;
2. That Licensing Act 2003 and Gambling Act 2005 matters are heard by the full committee of ten members;
3. That the quorum of the full committee be raised from three members to four members;
4. That the quorum of the Licensing and Regulatory sub committee remain as three;
5. That before recommending a change to the way that NNDR applications and appeals are heard, the Joint Governance seek the views of the Executive Member for Resources;
6. That the Committee Chairman or Vice Chairman be expected to attend appeals held at the magistrates court.

The meeting ended at 7.40pm it having commenced at 7.00pm

Schedule of Other Matters

1.0 Council Priority

1.1 Matters relating to the constitutional provisions of licensing processes and procedures relate to the Councils' regulatory functions.

2.0 Specific Action Plans

2.1 Matter considered and no issues identified.

3.0 Sustainability Issues

3.1 Matter considered and no issues identified.

4.0 Equality Issues

4.1 Matter considered and no issues identified.

5.0 Community Safety Issues (Section 17)

5.1 Matter considered and no issues identified.

6.0 Human Rights Issues

6.1 Every individual has the right to a fair hearing in accordance with Article 6 of the Human Rights Act, particularly when there is a risk that the determination of that hearing could lead to a loss of livelihood for the individual. It is considered that the proposals within the report comply with the principles of natural justice and the Human Rights Act and reduce the risk of challenge.

7.0 Reputation

7.1 Should the Councils operate practices and procedures in respect of their quasi-judicial regulatory licensing function which are not in accordance with the principles of natural justice, they leave the Councils open to challenge by way of appeal to the Magistrates' Court or Judicial Review. Such proceedings could be reputationally very damaging to the Council.

8.0 Consultations

8.1 Consultation has been undertaken with each Council's Licensing Committee, each Council's Leader and the Adur District Council Executive Member for Resources.

9.0 Risk Assessment

9.1 Matter considered and no issues identified.

10.0 Health & Safety Issues

10.1 Matter considered and no issues identified.

11.0 Procurement Strategy

11.1 Matter considered and no issues identified.

12.0 Partnership Working

12.1 The Adur District Council and Worthing Borough Council Licensing Committees operate independently of each other and are not governed by the Joint Committee Agreement, nor do they operate under the principles of partnership working.