



Ward: All in Adur

Key Decision: No - Not Executive

Constitutional Provisions relating to the Councils' Licensing Function

Report by Public Health & Regulation Manager and the Head of Legal

Services and Monitoring Officer

1.0 Summary

- 1.1 Licensing functions, being regulatory in nature, fall outside the Joint Committee Agreement and the partnership working between Adur District Council and Worthing Borough Council. Consequently, each Council retains its own responsibility for licensing functions and operates its own Licensing Committees.
- 1.2 Constitutional and procedural arrangements relating to licensing at Adur District Council and Worthing Borough Council vary and this report provides an opportunity for governance arrangements and procedure rules to be reviewed and simplified. It proposes revised governance arrangements and procedures for licensing committees and sub-committees and provides an opportunity to refer to national best practice, produce efficiency savings, streamline procedures, align processes and provide a more effective service to both businesses and lone applicants.

2.0 Background

Adur District Council Licensing Committee

- 2.1 Adur District Council currently has one 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 The Committee has the power to convene sub-committees comprising three elected Members. The sub-committees only have 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.

- 2.3 The quorum of the Licensing Committee and the sub-committee is three Members. 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, which 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.

Political Balance

- 2.4 Licensing Committees are required to be politically balanced in accordance with s.101(1) of the 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 Acts, although it is considered good practice to maintain political impartiality. 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.
- 2.5 There is no requirement for sub-committees of Licensing Committees to be politically balanced although, where possible, Officers ensure that they are.

Executive Members

- 2.6 The Council's constitutions do not specify whether or not an Executive Member may sit on a Licensing Committee. Whilst there is no legal restriction on appointing Executive Members to Licensing Committees, it is clear that licensing cannot be an Executive function. Currently, Adur District Council does not have any Executive Members sitting on the Committee. If Executive Members are appointed to a Licensing Committee, they act in their capacity as an ordinary elected member, not as a member of the Executive.

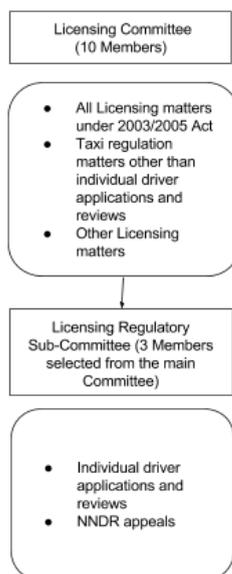
Licensing Procedure Rules

- 2.7 The Council has a set of Licensing Procedure Rules, which is proposed to be included as part of the Constitution.
- 2.8 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.
- 2.9 The Council allows discretion within the procedure rules for the Chair to amend the rules for a particular hearing, provided that the principles of natural justice continue to be complied with.

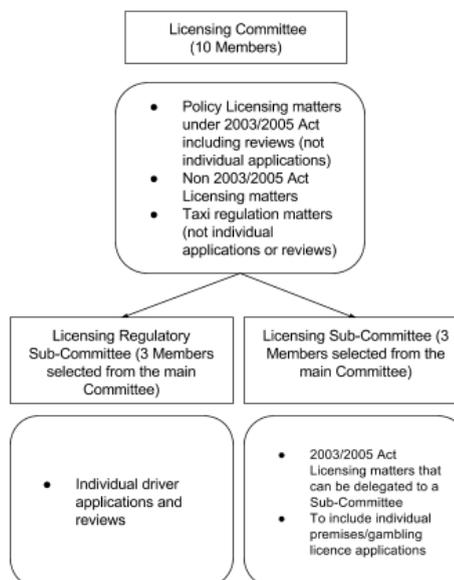
3.0 Proposals

- 3.1 It is proposed that the current arrangements are changed to a more cost effective and streamlined model and aligned for both authorities. The current model used at Adur results in individual applications being heard by a full committee. An individual applicant for a premises licence, gambling licence can consequently find it very intimidating to have to face a body of 10 Members to make their application and receive representations.
- 3.2 Feedback has been received from licence holders/applicants and their representatives that attending a full committee is overawing with 10 members deciding the outcome of a hearing. The current procedures can be disproportionate, unnecessary and contrary to the principles of natural justice and may in themselves lead to grounds for an appeal or challenge. They may also be contrary to Article 6 of the Human Rights Act relating to the right to a fair trial.
- 3.3 A review of other local authorities in Sussex has shown that the vast majority use the Licensing Committee with Sub-Committee model. It is therefore proposed that each authority should have its own Full Committee and the ability to appoint a Sub Committee.
- 3.4 The Full Licensing Committee would cover all areas of licensing, including gambling, premises, private hire and hackney carriages, street trading and decisions about policy changes. A sub-committee would be more agile when determining individual applications with a smaller membership.
- 3.5 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. Private hire and hackney carriage licensing matters would continue to be heard by a Sub-Committee comprising 3 members.

ADC LICENSING COMMITTEE CURRENT



ADC LICENSING COMMITTEE PROPOSED



Quorum

- 3.6 It is proposed that the quorum of Adur District Council Licensing Committee be increased from 3 Members to 4, to reflect a third of the membership rather than a quarter.
- 3.7 It is proposed that the quorum of both Councils' sub-committees be kept at 3 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. This arrangement would necessitate a substitute being on 'standby' for every meeting, or risk meetings having to be aborted on the day.

Licensing Procedure Rules

- 3.8 It is proposed that the Monitoring Officer be delegated authority to draft revised Licensing Procedure Rules in accordance with the provisions of this report, and incorporate them into each Council's constitution. The procedure rules would retain the discretion for the Chair to amend the rules for a particular case where appropriate to do so.

Scheduling of Meetings

- 3.9 As the country has emerged from a pandemic which saw a number of lockdowns which severely affected all licensing regimes, the Licensing service has seen a notable upturn in new applications, variations, enquiries and complaints. This has significantly impacted upon the workload of the Licensing section and in turn there has been an increase in the number of Committee meetings.
- 3.10 Currently, meetings of the Committees are scheduled for evenings and if there was flexibility to hold meetings both during the day and evenings this would crucially increase the total available time and reduce the impact of a large volume of meetings in the evenings.
- 3.11 A mixture of daytime and evening meetings would also serve the licensing trade more proportionately as some businesses and individuals work during the daytime as do the responsible authorities.

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 specify that any function of a Licensing Authority relating to the Licensing Act 2003 cannot be an Executive function.

5.0 Financial implications

- 5.1 Should individual Councils' licensing functions be dealt with by smaller sub-committees rather than full Committees, savings will be realised by more effective meetings, officer and member time and sundry costs relating to printing and postage.

6.0 Recommendation

- 6.1 That Adur District Council Licensing Committee considers the proposals in this report and makes recommendations to the Joint Governance Committee for decision.

Background Papers:

The Councils' Constitutions

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Schedule of Other Matters

1.0 Council Priority

1.1 Matter considered and will have a positive impact on Council Priorities.

2.0 Specific Action Plans

2.1 Matter considered and no significant issues identified.

3.0 Sustainability Issues

3.1 The proposal will result in a reduction in use of natural resources.

4.0 Equality Issues

4.1 Matter considered and no significant issues identified.

5.0 Community Safety Issues (Section 17)

5.1 Matter considered and no significant issues identified.

6.0 Human Rights Issues

6.1 Matter considered within the body of the report.

7.0 Reputation

7.1 Matter considered within the body of the report.

8.0 Consultations

8.1 Matter considered and no consultation requirements identified

9.0 Risk Assessment

9.1 Matter considered and no significant issues identified]

10.0 Health & Safety Issues

10.1 Matter considered and no significant issues identified

11.0 Procurement Strategy

11.1 Matter considered and no significant issues identified

12.0 Partnership Working

12.1 Matter considered and no significant issues identified