



## **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. It reviews how governance arrangements and procedures could operate 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**

##### Worthing Borough Council Licensing Committees

- 2.1 Worthing Borough Council currently has two 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 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.
- 2.2 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 Licensing Committee A is 4 Members; substitutes to the Committee are permitted, provided they have had appropriate training within the preceding two years.

- 2.3 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 Committee B, with any review hearings being heard by the full Committee B. The quorum for 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.
- 2.4 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. The Sub-Committee could be more agile when determining applications and reviews with a smaller membership.

#### Political Balance

- 2.8 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.
- 2.9 There is no requirement for Sub-Committees of the Licensing Committees to be politically balanced, although generally, where possible, Officers ensure that they are.

#### Executive Members

- 2.10 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. Worthing Borough Council currently has 2 Executive Members on its Licensing Committees, although it is noted this may have changed after the May Elections. There is no legal restriction on appointing Executive Members to licensing committees.

#### Licensing Procedure Rules

- 2.12 Both Councils have a set of Licensing Procedure Rules which differ significantly, and neither forms part of the Councils' constitutions.
- 2.13 In Worthing, those individuals who have made representations relating to an

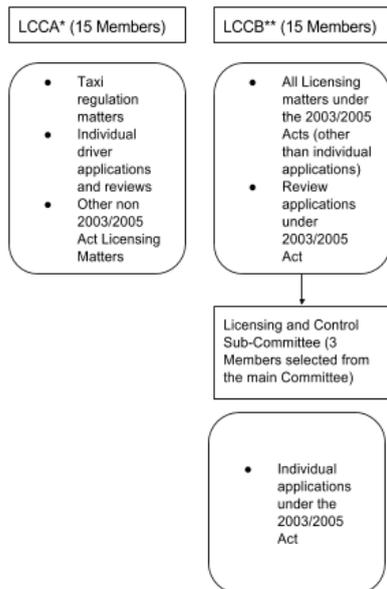
application may speak first at a hearing and are questioned, following which the applicant may make representations and is questioned. At the end of the hearing, the applicant sums up, followed by those who have made representations. It could be argued that this procedure is contrary to the principles 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.

- 2.15 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.

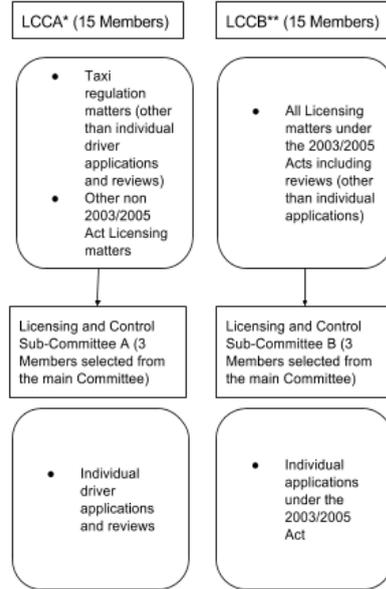
### **3.0 Proposals**

- 3.1 It is proposed that the current arrangements are changed to a more cost effective streamlined model and aligned, for both authorities. The current model used at Worthing results in individual applications being heard by a full Committee. An individual who submits an application for a hackney carriage/private hire drivers licence can find it very intimidating to have to face a full Committee to make their application and receive representations. The current arrangements can be disproportionate, unnecessary, 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.
- 3.2 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.
- 3.3 The Full Licensing Committee would cover all areas of licensing including gambling, premises licences, private hire and hackney carriages, street trading and make decisions about all licensing activity and in particular policy changes. A Sub-Committee can be more agile when determining individual applications with a smaller membership and is more practical.
- 3.4 It is proposed at Worthing there are Licensing and Control Committee A and B (LCCA and LCCB) both made up of 15 members that 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 gambling/premises and hackney carriage and private hire licence holders. LCCA would deal with Taxi regulation matters and all other non-2003/05 Act Licensing matters. LCCB would deal with all Licensing matters under 2003/2005 Acts.

**WBC LICENSING COMMITTEE CURRENT**



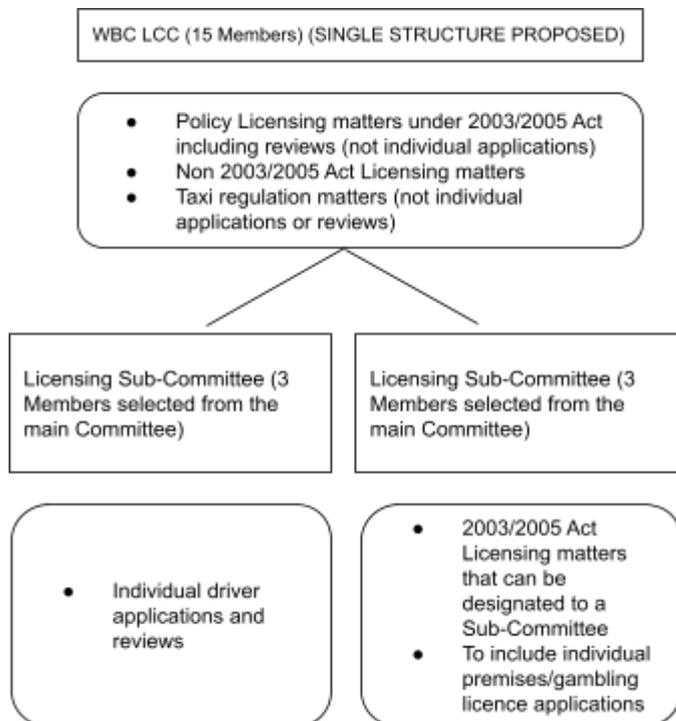
**WBC LICENSING COMMITTEE PROPOSED**



\*Licensing and Control Committee A

\*\*Licensing and Control Committee B

3.5 This could be streamlined further by just having a single Licensing Committee that would deal with all Licensing matters and have the ability to appoint a sub committee for all individual licensing matters.



- 3.7 It is proposed that the quorum of Worthing Borough Council's Licensing and Control Committees be set at 5 Members to reflect a third of the Committee membership rather than a quarter, to ensure fairness of process.
- 3.8 It is proposed that the quorum of 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 night'.

#### Licensing Procedure Rules

- 3.10 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

- 3.11 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.
- 3.12 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.
- 3.13 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 Worthing Borough Council Licensing and Control Committees A and B consider the proposals in this report and makes recommendations to the Joint Governance Committee for decision.

## **Local Government Act 1972**

### **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