

PROBITY IN LICENSING
PROTOCOL

1. INTRODUCTION	2
2. PRINCIPLES FOR A FAIR HEARING	2
3. LICENSING SUB-COMMITTEE MEMBER COMPOSITION	2
4. CODE OF CONDUCT	2
5. LOBBYING	6
6. COUNCILLORS’ REPRESENTATIONAL ROLE	7
7. OPEN MIND	9
8. BIAS	11
9. DUAL - HATTED MEMBERS	11
10. LICENSING POLICY	11
11. SITE VISITS	11
12. COUNCIL’S LICENSING APPLICATIONS	12
13. TRAINING	12
14. OMBUDSMAN & COMPLAINTS ABOUT THE ADMINISTRATION OF LICENSING APPLICATIONS	12
15. COMPLAINTS AND ALLEGATIONS OF BREACHES OF THIS PROTOCOL ..	13
16. OVERSEEING COMPLIANCE WITH THIS PROTOCOL	13
17. FURTHER GUIDANCE	13

PROBITY IN LICENSING PROTOCOL

1. INTRODUCTION

1.1 The purpose of this Protocol is to support and assist the Council in the proper discharge of its functions as licensing authority and to ensure there are no grounds for suggestion that a Licensing Sub-committee decision has been biased or otherwise not well founded. This Protocol supplements the [Member] Code of Conduct.

2. PRINCIPLES FOR A FAIR HEARING

2.1 The following general principles apply to the conduct of hearings by the Licensing Sub-committee:

- (a) all parties have a right to a fair hearing;
- (b) each application shall be treated on its own merits;
- (c) decisions shall be lawful, proportionate, non-discriminatory, open and transparent; and
- (d) decisions shall be made on the basis of the following considerations:
 - (i) the merits of the application;
 - (ii) the promotion of the licensing objectives;
 - (iii) Statements respectively, of Licensing and Gambling Policy;
 - (iv) guidance issued from time to time by the Home Office.

3. LICENSING SUB-COMMITTEE MEMBER COMPOSITION

3.1 The Licensing Sub-committee comprises three (3) Members appointed from the membership of the Licensing Committee. It is for the Licensing Committee to determine how Licensing Sub-committee members are selected, for example alphabetically or by rotation, to ensure regular Sub-committee sittings for all Members. In practice, selection is often determined by Member availability to ensure the Sub-committee is quorate.

3.2 Being a ward Member does not in itself constitute an interest in an application or create a risk of apparent bias. Providing the ward Member does not have a disclosable pecuniary interest or prejudicial interest in applications before the Sub-committee or providing there is nothing to indicate any risk of bias or predetermination (see sections 7 & 8 of this Protocol), a ward Member's local knowledge may in fact give an additional insight to an application and its implications on the licensing objectives. Ward members may use their local knowledge to ask relevant questions and clarify facts.

4. CODE OF CONDUCT

4.1 The adopted [Member] Code of Conduct states:

'You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.'

'You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.'

'You must be as open as possible about your decisions and actions and the decisions and actions of the Council and should be prepared to give reasons for those decisions and actions.'

'You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.'

4.2 The [Member] Code of Conduct covers issues central to the preservation of an ethical approach to Council business, including the need to ensure appropriate relationships with other Members, Officers and the public, which will impact on the way in which Members participate in the licensing process. The following 'guiding principles' (explained in detail elsewhere in this Protocol), should assist you in complying with the Code.

- (a) Licensing officers' views, opinions and recommendations are presented on the basis of their overriding obligation of professional independence, which may on occasion, be at odds with the views, opinions or decisions of the Licensing Sub-committee or its members. You must never seek to pressure Officers to provide a particular recommendation - this does not prevent you from asking questions or submitting views to Officers, which may be incorporated in a committee report.
- (b) Do not seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a disclosable pecuniary interest or prejudicial interest in a proposal, using your position to discuss that proposal with Officers or fellow Councillors, when members of the public would not have the same opportunity to do so.
- (c) If you propose to take part in the Licensing Sub-committee's decision making process, you must not give grounds to doubt your impartiality by:
 - making public statements about a pending decision before the Sub-committee meeting where it can be anticipated that the information required to take a decision will be available – such public statements could be seen as you prejudging a decision, or being biased in respect of, or be seen to be prejudging or demonstrating bias in respect of, the decision;
 - by indicating or implying your support or opposition to a proposal, or declaring your voting intention, before the meeting. Anyone who may be seeking to influence you must be advised that you will not formulate an opinion on a particular matter until all available information is to hand and has been duly considered at the relevant meeting.
- (d) When making a decision on a licensing application, you may have to take account of different points of view and make decisions based on the licensing objectives. It is your duty to ensure that decisions are properly taken and that the parties involved in the process are dealt with fairly. In making any decision, you should only take into account the licensing objectives and you should discount any irrelevant or immaterial considerations.

- (e) To reduce the risk of your, or the Licensing Sub-committee's decisions being legally challenged, you must not only avoid impropriety, but must at all times avoid any occasion for suspicion and any appearance or perception of improper conduct. The responsibility for this rests with you.
- (f) Do not accept gifts, benefits or hospitality from any person involved in or affected by a licensing proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum. Remember to notify the Monitoring Officer of the offer and your acceptance of any gift, benefit or hospitably where its value is over £100.
- (g) If you have a disclosable pecuniary interest or prejudicial interest in an item under discussion at the Licensing Sub-committee meeting:
 - unless you have a dispensation, you must not participate in the discussion and vote on the item and cannot be present in the public gallery/meeting room to observe the debate;
 - you must not make representations to Licensing Sub-committee members - written relevant representations should be submitted to Officers within the specified period after notice of the application is published by the Council (as licensing authority);
 - you should approach other fellow Councillors to represent your constituents' views at the Sub-committee meeting in accordance with section 6.2.(b)(ii) of this Protocol;
 - you must not attempt to lobby Licensing Sub-committee members about the matter, before, during or after a meeting, attempt to use your status as a Member to influence consideration of a submission, or try to get Officers to change a decision or recommendation;
 - you must avoid discussing your personal licensing application with other Councillors and cannot ask a fellow Councillor to make written relevant representations on your behalf or to represent you at the Licensing Sub-committee meeting.

These rules apply to all members of the Council.

- (h) Be aware that a presentation by an objector, professional agent, applicant or licence holder is a form of lobbying and you must not express any strong view or state how you or other Members might vote. Do refer those who approach you for licensing, procedural or technical advice to Officers.
- (i) Do not agree to any formal meeting with applicants or groups of objectors, unless an Officer is present.
- (j) Notify the Monitoring Officer if you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts, benefits or hospitality).
- (k) If, as a Licensing Committee member, you have decided in advance that you will take a particular view on a licensing application or that on an objective analysis of the facts, a fair minded observer would conclude that there is a real possibility of bias on your part, you:
 - must not volunteer to sit on the Licensing Sub-committee which deals with the application;

- you must not participate in the Licensing Sub-committee's decision-making on the application;
 - cannot be present in the public gallery/meeting room to observe the debate;
 - must not make representations to Licensing Sub-committee members - written relevant representations should be submitted to Officers in accordance with section 6.2(b)(ii) of this Protocol;
 - must not attempt to lobby Licensing Sub-committee members about the matter, before, during or after a meeting, attempt to use your status as a Member to influence consideration of a submission, or try to get Officers to change a decision or recommendation.
- (l) Where you have a responsibility for making a formal decision, you must not only act fairly, but also be seen as acting fairly ('quasi-judicially') in the decision-making process.
- (m) As a Licensing Sub-committee member, you will not have fettered your discretion or breached this Protocol through:
- listening or receiving viewpoints from residents or other interested parties;
 - making comments to residents, interested parties, other Members or Officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
 - seeking information from licensing officers; or
 - having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

4.3 Disclosing Interests

4.3.1 The quorum of the Licensing Sub-committee is three (3) for the duration of the meeting. Where a Sub-committee meeting becomes inquorate during the course of the meeting, then the meeting must be adjourned to such time, place and date as may be determined by the Members present. It is therefore important that Licensing Committee members should consider their interests' position, before they volunteer to sit on a Licensing Sub-committee.

4.3.2 If you have a disclosable pecuniary interest or prejudicial interest in a matter to be considered, or being considered at a meeting, you must:

- (a) disclose the interest; and
- (b) explain the nature of that interest at the commencement of that consideration or when the interest becomes apparent (subject to para.4.3.3 of this Protocol); and unless you have been granted a dispensation:
- (c) not participate in any discussion of, or vote taken on, the matter at the meeting; and
- (d) withdraw from the meeting room whenever it becomes apparent that the business is being considered; and
- (e) not seek improperly to influence a decision about that business.

4.3.3 Where your disclosable pecuniary interest or prejudicial interest has been agreed by the Monitoring Officer as being a sensitive interest, you need only disclose the existence of the interest, but not its nature.

4.3.4 The responsibility for declaring a disclosable pecuniary interest or prejudicial interest rests with you.

5. LOBBYING

5.1 Lobbying is a normal and perfectly proper part of the political process: those who may be affected by a licensing decision may seek to influence it through an approach to their elected ward Member or a Licensing Committee/Sub-committee member. However, lobbying can, unless all parties concerned exercise care and common sense, lead to the impartiality and integrity of the Member being called into question.

5.2 As the membership composition of the Licensing Sub-committee is drawn from the membership of the Licensing Committee, Committee members should avoid any attempts by others to lobby them on particular applications where they volunteer to sit on the Licensing Sub-committee dealing with the application(s). Members' responses to approaches by applicants, objectors, licence holders or other members of the public are of critical importance if they are not to be seen to have pre-determined an application (section 7 of this Protocol). Accordingly when approached, Licensing Sub-committee members should never commit themselves to speak or vote in any particular manner or express such a firm point of view that it amounts to predetermination. In practice, Members can respond by saying that whilst they understand the person's views, they cannot commit themselves until they have addressed their minds to the full range of information at the Licensing Sub-committee meeting. Members may also advise that the person's best interests would be served by submitting their relevant representations (based on the licensing objectives) in writing, to the Licensing Team or their ward Member.

Licensing Committee/Sub-committee members should normally point out the quasi-judicial nature of the proceedings and explain that they cannot enter into discussions. Members should restrict themselves to giving procedural advice only.

5.3 Licensing Sub-committee members should not attend private meetings with applicants or groups of objectors on their own. Such meetings, if considered helpful in order to clarify issues, should be arranged by or attended by relevant licensing officers so that those present at the meeting can be advised from the outset that the discussions will not bind the Council as licensing authority to any particular course of action and to ensure the meeting is properly recorded on the application file and disclosed when the matter is reported to the Sub-committee. The same principle applies to formal presentations which are sometimes requested by applicants particularly on major applications. Such presentations are a form of lobbying and whilst Licensing Sub-committee members at such events may quite properly ask questions and seek clarification about the proposals, they should not express views or indicate how they are likely to vote when the matter comes before the Sub-committee.

5.4 Councillors must not lobby Licensing Sub-committee members directly or indirectly, in writing or otherwise, in respect of applications to be decided by the Sub-committee, with a view to influencing their decision.

5.5 Licensing Sub-committee members should not accept invitations from individuals to discuss applications on site. Formal site visits should only be attended if they are arranged by the Licensing Sub-committee, with licensing officers present

(see section 11 of this Protocol).

6. COUNCILLORS' REPRESENTATIONAL ROLE See Appendix 1

6.1 Representations on an application are based on the licensing objectives and can be made by any person or their representative. Any Councillor can therefore make written relevant representations in their own right or on behalf of their constituents and subject to the rules detailed in paras.6.2(b)(i) and (b)(ii) of this Protocol, can also appear at a Licensing Sub-committee meeting in accordance with the Licensing Sub-committee Hearing Procedure.

6.2

(a) Under the Council's Standing Order 36, subject to not having a disclosable pecuniary interest or prejudicial interest in the item, and subject to the Chairman's agreement, any Member may, on the giving of 24 hours' notice in writing to the Member Services Manager, be entitled to request to speak on any item(s) on the agenda of a committee, board etc *of which they are not a member* in the context of this Standing Order, 'not being a member' means not appointed to membership of the committee, board etc).

The parties to a Licensing Sub-committee meeting are the licensee and the responsible authorities/interested parties who have made written relevant representations and whilst they are allowed to expand on their representations, they cannot raise new matters. Allowing Members to address the Licensing Sub-committee in the same way as other committees, could result in the Sub-committee's decision being open to challenge on the ground that the Sub-committee has taken into account matters which were not raised as written relevant representations in response to the notice of the application.

Therefore, with licensing applications, due to the requirement to submit written relevant representations within a specified period after notice of the application is published by the Council (as licensing authority) and it is only those representations which can then be considered by the Licensing Sub-committee, the procedure for speaking at the Licensing Sub-committee under Standing Order 36, differs from that applied to other committees etc.

(b) As a non Licensing Sub-committee member:

(i) providing you do not have a disclosable pecuniary interest or prejudicial interest in the licensing application:

you may make written relevant representations in your own right or on behalf of your constituents within the specified period after notice of the application is published by the Council. You must be able to demonstrate to the Council as licensing authority, that you have been requested to represent the person in question; and

you may appear at the Licensing Sub-committee meeting in the same way as the responsible authorities/interested parties.

(ii) if you have a disclosable pecuniary interest or prejudicial interest in a licensing application, you can still present your views or those of your constituents in the following ways:

(aa) you may make written relevant representations to Officers (not

Councillors) in your own right or on behalf of your constituents within the specified period after notice of the application is published by the Council as licensing authority providing you disclose the existence and nature of your interest and do not seek preferential consideration of your representations;

- (bb) if you have been asked to represent a constituent(s), you should formally advise them about your disclosable pecuniary interest or prejudicial interest;
- (cc) unless you have been granted a dispensation to appear at the Sub-committee meeting, you can arrange for another Member to represent your constituents' views at the Sub-committee meeting providing you are able to demonstrate to the Council as licensing authority, that you have been requested to represent the person in question - this Member may then appear at the Licensing Sub-committee meeting in the same way as the responsible authorities/interested parties and that Member should make it clear to the Sub-committee, that he/she is acting in the place of a Member who has a disclosable pecuniary interest or prejudicial interest in the matter.

(iii) The legal principles of 'predetermination' and 'bias' (sections 7 & 8 of this Protocol) will not apply to you, if you take no part in the Licensing Sub-committee's decision making process.

6.3 When representing your constituents, your overriding duty is to the whole community, not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.

6.4

- (a) If you are representing an applicant or constituent in a professional capacity e.g. as a paid agent or advocate, you will have a vested interest in the outcome and therefore a prejudicial interest.
- (b) If you wish to act on behalf of applicants or constituents in a professional capacity, remember that the efficacy of acting in a representative capacity, relies on you being present throughout the Licensing Sub-committee's decision making process but that, in accordance with section 4.3 of this Protocol, the efficacy of your representation is significantly reduced by the requirement on you, to leave the meeting room prior to the item being discussed and voted on.

6.5 Any Councillor may apply/call for a review in relation to any premises in any ward within the Borough of Dartford, even when none of their constituents have approached them formally to do so and subject to not having a disclosable pecuniary interest or prejudicial interest in a review application, may appear at any subsequent Sub-committee meeting.

6.6 The participation of or association with action groups by Licensing Sub-committee members requires particular care. Membership or active participation may give the appearance that Members are committed to the aims of the action group and therefore to a particular view on the application, as well as giving the impression of bias. Attendance at any meetings of the action group would be inadvisable, unless it is a public meeting and attendance is on the express basis of listening only and not being committed to vote on the matter in a particular way, until all the evidence is to hand.

6.7 To be effective in representing the views of interested parties and not mislead them about the licensing decision process, Councillors should advise that local opposition to, or support for, a licence application is not in itself grounds for refusing or granting the licence and that consideration must be given to the licensing objectives. Where opposition to, or support for a licensing application is not founded upon the licensing objectives, Councillors should avoid giving the impression that such representations can be given weight and be careful about promoting that opposition or support both before and at the Sub-committee meeting. To do so may raise false expectations of a decision, which cannot be justified when it comes to objective formal consideration, potentially resulting in disillusionment and confusion over both the decision process and the role of that Councillor.

7. OPEN MIND

Predetermination (i.e. a mind that is closed to the consideration and weighing of relevant factors in the decision making itself) is a legal concept that the courts have always applied to local authority decision making and predates the [Member] Code of Conduct and is not altered by it

A Licensing Sub-committee member with a pre-determined view on a licensing application, is disqualified from participating in the Sub-committee's decision-making on the application

7.1 Central to the determination of licensing applications by the Licensing Sub-committee, is the principle that Members who determine licensing applications should come to the Sub-committee meeting with an open mind and be ready to hear and consider all arguments relating to the application. Licensing Sub-committee members are, of course, free to form a personal opinion on a licensing application, listen to a point of view about a licensing proposal, give procedural advice and agree to forward any comments to Officers, but, if taking part in the Licensing Sub-committee's decision making process on the licensing application, should not publicly commit themselves to a particular point of view on the application prior to its full consideration at the Sub-committee meeting, as this could be perceived by others, as the Member having closed his/her mind to hearing all the relevant licensing considerations and/or other relevant considerations.

The legal principle of predetermination applies to a decision maker when making the decision. Where for example, a Licensing Sub-committee member has publicly committed themselves to a particular point of view (e.g. supporting or opposing a proposal or declared their voting intention before the matter has been fully reported to the Licensing Sub-committee), that may amount to predetermination, were that Member to participate in the decision on that application.

7.2 A public statement by a Licensing Sub-committee member (who participates in the decision making process) saying that they are open to persuasion may not be sufficient to prove they are not predetermined – they must genuinely be open to persuasion. It is for the courts to determine if a decision is flawed because a Member was not open to persuasion on the merits of the case.

Example of predetermination

This application is a disaster waiting to happen. Under no circumstances could I ever support approval of this application. The applicant needs to go back to the drawing board and have a complete rethink or, ideally, he should do us all a favour and abandon this completely.

7.2 If a Licensing Committee member is 'predetermined' on an application, they cannot take part in the Licensing Sub-committee meeting deciding the application and must withdraw from the meeting room during consideration of the application. The Member may however make written relevant representations to Officers (not fellow Councillors) and/or arrange for another Member to represent their constituents' views at the Sub-committee meeting, providing they are able to demonstrate to the Council as licensing authority, that they have been requested to represent the person in question.

7.4 Licensing Sub-committee members are not prevented from having a predisposition towards a particular outcome for a licensing application as they are entitled to begin forming a view on the application as more information becomes available before the Licensing Sub-committee meeting, but if they have formed a provisional view, they must still be willing to consider all arguments presented at the Sub-committee meeting and be open to persuasion on the merits of the application, as a decision on the application can only be taken by the Sub-committee after all available information is to hand and has been duly considered. *It is important that Licensing Sub-committee members be open to any new argument at all times up to the moment of decision.*

There is a clear parallel with section 25 of the Localism Act 2011, which confirms that a councillor should not be held to have a closed mind just because they have previously indicated a view on a matter relevant to a decision.

Example of predisposition

I am very concerned about the impact of this proposal on the public nuisance licensing objective. There have been numerous complaints about music noise from the premises from mid-evening until either late evening or early morning. I want to see convincing measures within the direct control of the applicant, that this proposal will not make matters even worse.

7.5 It is important that no Licensing Sub-committee member comes to a Sub-committee meeting with a pre-determined view on any licensing application. If a Licensing Sub-committee member is seen to have predetermined their view and fettered their discretion and then takes part in the Sub-committee's decision – making process, it will put the Council at risk of a maladministration complaint or legal proceedings on the grounds of the decision being tainted with bias.

7.6 If a Licensing Sub-committee member decides in advance that they are bound to take a particular view on an application (for example because it is so controversial with constituents in their ward) then that will preclude the Member from participating in the Sub-committee's decision making process in relation to the application. In effect, the Member has to choose between publicly supporting or opposing a particular application and retaining their ability to participate in the Sub-committee's decision making process.

7.7 A Licensing Sub-committee member may consider that they run too great a risk of becoming identified with one side of the argument no matter what safeguards they take. In these circumstances, the only wise course is not to

participate in the Sub-committee's decision making process on that application.

- 7.8 Licensing Sub-committee members may receive correspondence from constituents, applicants and licence holders asking them to support or oppose a particular proposal. Members should acknowledge the correspondence by saying that the matter has been referred to the Strategic Director. Condoning a point of view in advance of the application being reported to the Licensing Sub-committee, will raise the issue of pre-determination and will prevent the Member from fully taking part in the determination of the application.
- 7.9 Licensing Sub-committee members should not attend a licence application presentation unless an Officer is present and/or it has been organised by Officers. Remember that the presentation is not part of the formal process of a hearing and determination of any subsequent application.

8. BIAS

- 8.1 Licensing Sub-committee members should not form or show bias against or in favour of any particular person, company or group or any particular site or locality, nor give the appearance of bias (bias may include pre-judged ideas based on the Member's own prejudices or political affiliations). It does not matter whether there is actual bias – the legal test for apparent bias is whether a fair minded observer aware of all the facts would conclude there was a real possibility of bias.
- 8.2 If a Licensing Committee member has formed or shown bias against, or, in favour of any particular person, or there is an appearance of bias in a particular application, they cannot volunteer to sit on a Licensing sub-committee that decides the application. The Member may however make written relevant representations to Officers (not fellow Councillors) and/or arrange for another Member to represent their constituents' views at the Sub-committee meeting, providing they are able to demonstrate to the Council as licensing authority, that they have been requested to represent the person in question
- 8.3 Participation in the decision making at a Licensing Sub-committee by a Member disqualified by bias, potentially invalidates the decision.

9. DUAL - HATTED MEMBERS

- 9.1 Councillors often consider issues at more than one tier of local government, including speaking and voting in all tiers. For example, councillors may be a borough/parish and county councillor.
- 9.2 Parish/Town Councils may make written relevant representations in their own right. Licensing Sub-committee members who are 'dual-hatted members' must have regard to the guidance at sections 4.3, 7 and 8 of this Protocol on interests, predetermination and bias.

10. LICENSING POLICY

- 10.1 A Licensing Committee member who participated in a Council meeting which approved the Statement of Licensing Policy/Policy Statement under respectively, the Licensing Act 2003 and the Gambling Act 2005, may sit as a Licensing Sub-committee member, providing they do not have a disclosable pecuniary interest or prejudicial interest or have not fettered their discretion through pre-

determination or bias.

11. SITE VISITS

- 11.1 Site visits are generally unnecessary in respect of licensing applications and should only be held where particular site factors cannot be ascertained from plans provided with the application. Where a site visit is deemed necessary, it will be part of the Licensing Sub-committee's formal hearing process. No representations from the applicant or other interested parties will be heard or accepted on site. No indication of the likely outcome of the application will be given on site.
- 11.2 **Interests:** Any Councillor (including Licensing Sub-committee members) with a disclosable pecuniary interest or prejudicial interest in a licensing application, must not attend a site visit relating to that application.
- 11.3 **Predetermination (approaching a decision with a closed mind):** Licensing Sub-committee members who have fettered their discretion by publicly committing themselves to a particular point of view (e.g. supporting or opposing a licensing application or declaring their voting intention or a firm view on the merits of an application before the Sub-committee meeting) cannot attend the site visit relating to that application. Members in this position should be mindful that they must not attempt to lobby other Sub-committee members about the matter at any time nor should they attempt to use their status as a Member to influence consideration of a submission, or try to get officers to change a decision or recommendation.
- 11.4 **Bias:** Where a Licensing Sub-committee member's interest in the licensing application may give rise to an appearance of potential bias, they should not participate in the site visit.
- 11.5 **Predisposition (without amounting to apparent bias):** Where Licensing Sub-committee members have formed a provisional view towards a particular outcome, but remain prepared to consider and weigh relevant factors in reaching the final decision, they may attend a site visit and raise questions etc.

12. COUNCIL'S LICENSING APPLICATIONS

- 12.1 Where the Council applies for a premises licence for open spaces or for buildings that it owns, or where there is a variation application or review in respect of such open spaces or buildings, the Licensing Sub-Committee must hear and determine the application or review in exactly the same way as other applications and reviews. Licensing Sub-committee members must have no regard to the interests of the Council itself, aside from receiving written relevant representations on the application.
- 12.2 If a Licensing Committee member has taken a role in the decision to submit the application, they must not sit on the Licensing Sub-committee, which determines the application.

13. TRAINING

- 13.1 Specialised training sessions are designed to extend Members' knowledge of licensing law, regulations, procedures and codes of practice and thus assist

them in carrying out their role properly and effectively.

- 13.2 Licensing Committee members are required to attend training on the [Member] Code of Conduct and the application of disclosable pecuniary interests, prejudicial interests, predetermination and bias in the decision making context. Members who fail to attend such training are excluded from meetings of the Licensing Sub-committee until they have been trained.

14. OMBUDSMAN & COMPLAINTS ABOUT THE ADMINISTRATION OF LICENSING APPLICATIONS

- 14.1 The Commission for Local Administration ('the Ombudsman') is a principal mechanism for accountability in respect of local authority administration, and constitutes an independent system for the investigation and resolution of complaints of injustice caused by the maladministration (with injustice or without injustice) of local authorities (and of certain other bodies).

- 14.2 Members of the public who claim to have sustained injustice in consequence of maladministration in connection with action taken by or on behalf of the Council, can bring a complaint, or can have a complaint brought on their behalf, and on occasions may ask Councillors to take a complaint forward on their behalf.

- 14.3 Although complainants can approach the Ombudsman at any time, the Council must first be given an opportunity to answer the complaint, through its Corporate Complaints Procedure. The Ombudsman may ask what efforts, if any, have been made to resolve concerns personally and locally, and may encourage and assist complainants to make this effort.

- 14.4 The Ombudsman has discretion as to whether or not to investigate a complaint, although such discretion must be exercised reasonably.

- 14.5 In assessing a complaint, the Ombudsman will not be concerned with the nature, quality or reasonableness of the decision itself. Of concern, will be the manner in which the Licensing Sub-committee decisions are reached and the manner in which they are, or are not, implemented.

- 14.6 The five most common causes of maladministration relate to:

- unreasonable delay in taking appropriate action;
- failure to provide adequate information, explanation or advice to users;
- failure to take appropriate action;
- taking incorrect action;
- failure to investigate an issue properly.

- 14.7 Appeals against refusal of a licensing application are dealt with by the Magistrates' Court.

15. COMPLAINTS AND ALLEGATIONS OF BREACHES OF THIS PROTOCOL

Allegations of any failure to meet this Protocol must be made in writing, to the Monitoring Officer. The Monitoring Officer will consider how the complaint or allegation should be dealt with. At a minor level, this may be no more than

informally referring the matter to the Leader of the relevant party group. More serious complaints may result in an investigation and a hearing before the Hearing Panel.

16. OVERSEEING COMPLIANCE WITH THIS PROTOCOL

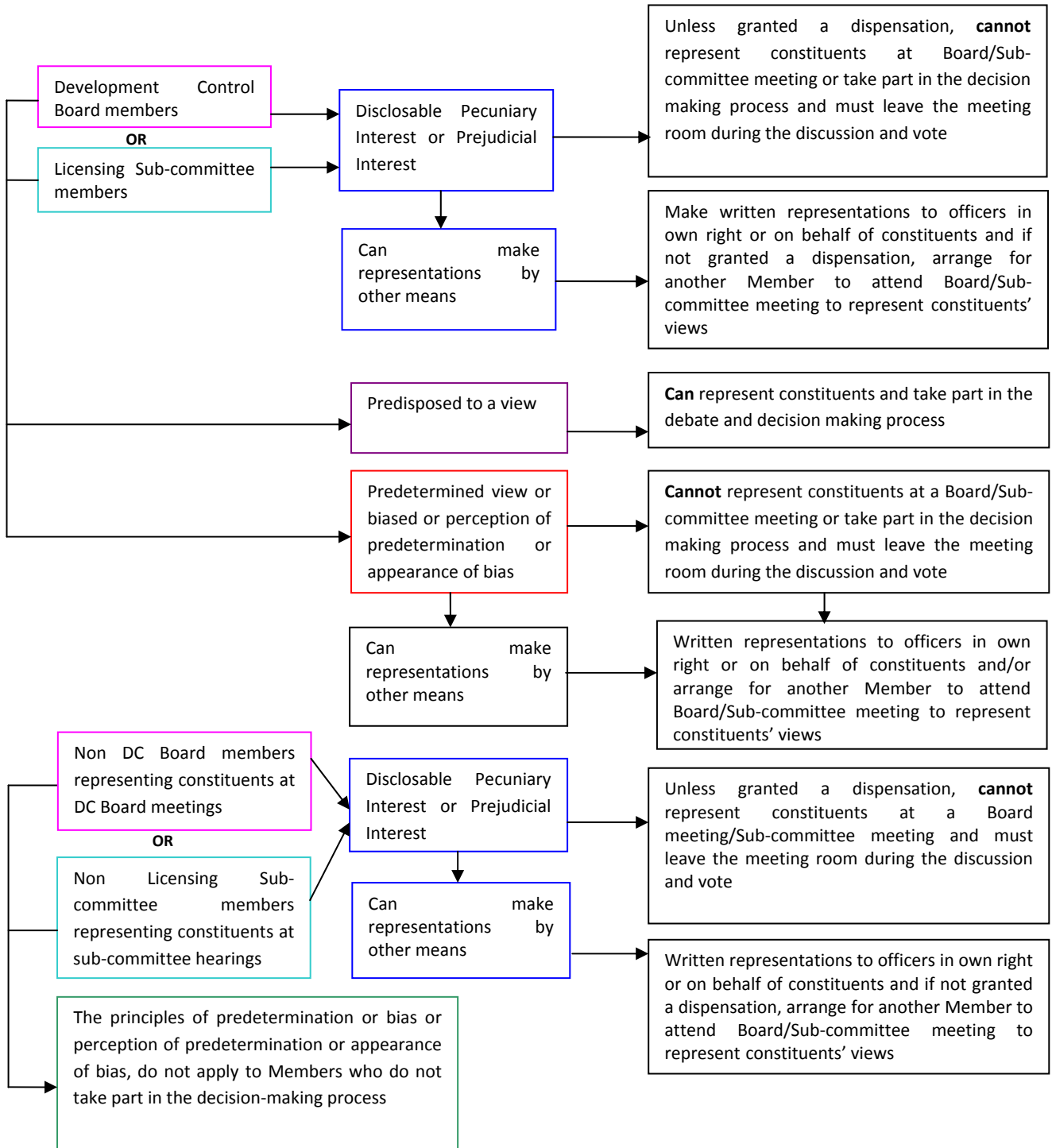
The Audit Board oversees compliance with this Protocol.

17. FURTHER GUIDANCE

Further advice or clarification can be sought from the Head of Legal Services & Monitoring Officer.

Adopted by the Licensing Committee 19.12.2012 [Min.No.11]
Endorsed by the Audit Board 09.01.2013 [Min.No.43]
Amended under delegated authority -21 December 2021

APPENDIX 1 - A COUNCILLOR'S REPRESENTATIONAL ROLE – DEVELOPMENT CONTROL BOARD AND LICENSING SUB-COMMITTEE



SITE VISITS – DEVELOPMENT CONTROL BOARD AND LICENSING SUB-COMMITTEE

