

LICENSING COMMITTEE

16 June 2016

Is the final decision on the recommendations in this report to be made at this meeting?

Yes

Licensing Committee Roles and Responsibilities

Final Decision-Maker	Licensing Committee
Lead Head of Service	John Littlemore
Lead Officer and Report Author	John Littlemore
Classification	Public
Wards affected	All

This report makes the following recommendations to this Committee:

1. The Licensing Committee agrees that training in accordance with Paragraph 2.6 of the report is completed by members and substitutes within 6 months of being selected for the Licensing Committee.
2. The Licensing Committee agrees that training in accordance with Paragraph 2.6 is refreshed every year if required or when statutory or significant guidance changes are made, whichever is the sooner.

This report relates to the following corporate priorities:

- Keeping Maidstone Borough an attractive place for all
- Securing a successful economy for Maidstone Borough

Timetable

Meeting	Date
Licensing Committee	16 June 2016

Licensing Committee Roles and Responsibilities

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 During early 2016 the Chair and Vice Chair requested the Head of Service for Licensing to provide a report that would assist members and substitutes of the Committee (and sub-committees) to understand the importance of completing the training provided by the Council on licensing statute and regulation. At the same time it was requested that the role of members in terms of enforcement was also clarified.
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2. INTRODUCTION AND BACKGROUND

- 2.1 The Licensing Committee and its sub-committees exercise licensing and gambling functions on behalf of the Council. This includes undertaking a variety of duties including gambling functions, licences in relation to the sale of alcohol and entertainment, making recommendations to the Communities Housing and Environment Committee or Council concerning the adoption of a new Policy Statements, any decisions on Cumulative Impact Policies for the Borough, Late Night Alcohol Levy. Sub-committees are called as required in order to make decisions about individual licensing matters and appeals that are not otherwise delegated to the Head of Housing and Community Services
- 2.2 As this sphere of responsibility is heavily governed by statute and guidance the discharge of these functions requires that members and officers have a good understanding of the statutory framework. Licensing, as an area of local authority decision making, has become a fertile topic for legal challenge.
- 2.3 This emphasises the importance for members and officers to be familiar with the legislation in order to make sound decisions. For example there might be questions during a sub-committee hearing that a layperson might feel are intuitive to ask but in reality are irrelevant to the legal issue at hand. Asking such questions and then relying on the answer to form the decision could expose the Council to challenge in the Courts.
- 2.4 The Council's Constitution (Part 4.5 (c) 'Local Code of Conduct for Officers and Members dealing with licensing matters') requires that:

"The Council has agreed that no Councillor will be able to serve on this Committee without having agreed to undertake a minimum period of training on the policies procedures, legislation and guidance relevant to of this Committee as specified by the Committee. This training should be completed to an agreed level according to an agreed programme within an agreed time period set by the Committee for newly appointed members and substitute members of the Committee. If the specified training has not been completed by the due date, the Councillor will cease to be a member/substitute member of this Committee until the training has been completed. The Head of Housing and Community Services will keep a record of the training requirements of this Committee and of Councillors'

compliance with the requirements. Existing members and substitute members of the Licensing Committee should be updated regularly on changes of legislation and procedures and must receive refresher training on an annual basis. Failure to undertake the refresher training will result in the Councillor ceasing to be a member/substitute member of the Committee until the refresher training has been completed."

2.5 In essence members of the Committee are required to agree a date by when they will have undertaken the relevant training. Failure to complete the relevant training by the agreed date will render that member ineligible to take part in the Licensing Committee or its sub-committee's business until the training has been completed.

2.6 A list of the required training to be undertaken is as follows:

Licensing Act 2003
Gambling Act 2005
Hackney Carriage and Private Hire (taxis)
Street Trading
Sex Establishments
Scrap Metal Dealers

2.7 Attached at Appendix A is a schedule of which members have undertaken training and the date completed. The Licensing Committee is asked to endorse that a reasonable period by when the training should be completed before the removal from the Committee becomes effective is 6 months from the date of being appointed.

Visits to premises

2.8 Members of the Licensing Committee undertake the role highlighted in Paragraph 2.1 above. The duties that involve investigating, visiting premises to provide advice or for enforcement purposes are the remit of officers. Members should not undertake unannounced visits to premises or carrying out functions assigned to officers. Visits are only permitted in an official capacity in the following circumstances (Part 7 'Local Code of Conduct for Officers and Members dealing with licensing matters'):

"The Protocol for site visits, which take place during a hearing, is as follows:-

7.1 Purpose of Visits

(iii) The purpose of the site visits is to enable Councillors to inspect proposed application sites to enable Councillor to better understand the impact of that proposal;

(iv) It is not the function of the visit to receive representations or debate issues.

7.2 Selecting Site Visits

(iv) Visits will take place if voted for by a majority of the Licensing Sub-Committee;

(v) Site visits will only take place where the Sub-Committee believes that there is a clear substantial benefit to be gained and the hearing will be adjourned.

7.3 Procedures on Site Visits

(iv) The site will be inspected from the viewpoint of both applicant(s) and other persons making representations;

(v) Where applicant(s) and/or other persons making representations are present, the Chairman may invite them to point out matters or features which are relevant to the matter being considered but will first advise them that it is not the function of the visit to receive representations or debate issues.

7.4 Decision Making

(i) No decision will be taken on site.

- 2.9 Members should refrain from undertaking any other visit in an MBC capacity, as this could leave the Council open to challenge and/or render the member unable to take part in a decision relating to a venue where the unauthorised visit was undertaken. If members witness something relating to a licensing matter that causes concern they should bring the matter to the attention of the Licensing Team to investigate or outside of working hours alert the appropriate authority if the matter is of such significance or urgency that it cannot wait until the next working day.

3. AVAILABLE OPTIONS

- 3.1 Members endorse the training requirement to be completed within 6 months of appointment to the Licensing Committee.
- 3.2 Members could decide an alternative period in which to complete the training, however, a longer period than 6 months was not proposed as the Committee meets at least quarterly; in addition there will be sub-committees and a time longer than 6 months without formal training was felt to be too long.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 To approve the option set out in Paragraph 3.2, as this will comply with the Council's Constitution and ensure that members keep up to date with relevant statute and regulation in order to make sound decisions. This will help reduce the risk of successful challenges to decisions that could then result in reputational damage to the Council, loss of confidence by external stakeholders and businesses, and significant costs from court cases.

5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 5.1 Not applicable

6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

6.1 Members will be provided with the dates when training will be made available.

7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities		
Risk Management	Ensuring that members have undertaken the appropriate training will help to reduce the risk of challenge to decisions made by the Licensing Committee and its sub-committees	
Financial		
Staffing		
Legal	Training in the required fields of expertise will help to ensure that good quality decisions are made by the Committee. See risk management.	
Equality Impact Needs Assessment		
Environmental/Sustainable Development		
Community Safety	Proper decision making will contribute towards safer communities	Head of Housing Community Services
Human Rights Act		
Procurement		
Asset Management		

8. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Appendix A: Table of Training Undertaken in past 12 months
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9. BACKGROUND PAPERS : Maidstone Borough Council Constitution