

CONSTITUTION OF THE LONDON BOROUGH OF CROYDON

Part 5.G – Protocol for Licensing Hearings under the Gambling Act 2005

Protocol adopted by the Licensing Committee on: 10th October 2007

Effective from: 22nd November 2007

Amended: November 2012

1. DEFINITIONS

1.1 In this Protocol:

- **'The Act'** means the Gambling Act 2005.
- **'The Regulations'** mean the Gambling Act 2005 (Proceedings of Licensing Committees & Sub-Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007.
- **'Applicant'** means the person who makes an application under the Act. This includes an applicant making an application for a premises licence for an adult gaming centre, casino, bingo premises, betting premises, track or licensed family entertainment centre, travelling fair permits or for a variety of permits and temporary or occasional use notices. The term Applicant also refers to a person representing the Applicant.
- **'The relevant committee'** means the Licensing Committee or Licensing Sub-Committee, empowered under the Act and the Council's Constitution to determine applications under the Act.
- **'Party to the hearing'** means a person to whom a notice of hearing is required to be given in accordance with Regulation 5(1) of the Regulations including the Applicant, Responsible Authorities and Interested Parties and "Party" and "Parties" shall be construed accordingly. "Party" includes a person representing the Applicant, Responsible Authority and Interested Parties.
- **'Responsible Authority'** means a public body as defined by s.157 of the Act and the Regulations that must be notified of applications and is entitled to make representations. They are the Licensing Authority, the Gambling Commission, HM Revenue and Customs, the Police, the Fire Authority, Planning Officers, Noise and Nuisance Officers and the Croydon Children's Safeguarding Board. "Responsible Authority" includes a person representing the Responsible Authority.
- **'Interested Party'** means any of the following:
 - a) a person who lives sufficiently close to the premises likely to be affected by the authorised activities;
 - b) a person who has business interests that might be affected by the authorised activities; or
 - c) a person who represents the persons who satisfy para.a) or b)."Interested Party" and "Interested Parties" shall be construed accordingly.

2. INTRODUCTION/APPLICATION OF PROTOCOL

- 2.1 This protocol applies to hearings held by the London Borough of Croydon under the Act. It sets out how the Licensing Committee and its Sub-Committees will manage their business under the Act and the procedure to be followed in determining applications/requests for review and at hearings. It includes the matters required to be explained in the notice of hearing under Regulation 6(1) of the Regulations.
- 2.2 The protocol shall comply with the Regulations and any regulations or enactment amending or replacing the same. The protocol applies to all applications which are required under the Act to be determined by the relevant committees, and to the conduct of all Members whether or not Members of the Licensing Committee or its Sub-Committees.

3. DETERMINATION OF APPLICATIONS

- 3.1 Both unopposed applications and those where a hearing is required under the Act shall be heard by one of the Licensing Sub-Committees.
- 3.2 Applications and other matters shall be determined in accordance with the guidance issued under section 25 of the Act.

4. THE LICENSING SUB-COMMITTEES

- 4.1 The membership of each Licensing Sub-Committee shall be three Members, drawn from the pool of 22 Members and Reserve Members of the Licensing Committee. The Council Solicitor, Director of Democratic and Legal Services shall, after consultation with the appropriate Group Whip(s), nominate members to serve on meetings of the relevant committee taking into account member availability, group proportionality and the need to avoid any potential conflict of interests.
- 4.2 The quorum of the relevant committee is three members and all three members must be present throughout the hearing.
- 4.3 Each Political Group shall nominate a reserve member for each meeting of the relevant committee to provide for the eventuality that a member is unavailable at short notice.
- 4.4 The relevant committee shall be subject to the 'access to information' rules applying to committees and sub-committees appointed under Section 102 of the Local Government Act 1972 and the Council's Access to Information Procedure Rules set out in Part 4B of this Constitution, provided always that the relevant committee may at any time decide to withdraw to private session to deliberate on any matter.
- 4.5 The relevant committee shall be subject to the 'political balance' rules applying to committees and sub-committees appointed under Section 102 of the Local Government Act 1972.
- 4.6 The Licensing Sub-Committee shall appoint a chair for the meeting from

amongst its membership at the start of each meeting.

5. HEARINGS

- 5.1 Hearings will be convened and conducted in accordance with the procedure at Annex 1 to this protocol.
- 5.2 Hearings shall normally take place at the Town Hall, Katharine Street, Croydon. Hearings may take place during the daytime or evening.
- 5.3 The agenda for meetings of the relevant committee shall be agreed by the Council Solicitor, Director of Democratic and Legal Services after any necessary consultation with the relevant Chair. The Council Solicitor, Director of Democratic and Legal Services, after consultation with the Chair and the Licensing Officer, shall determine how many applications shall be heard at each meeting of the relevant committee and in what order, taking into account all relevant factors including the number of parties who are present for each item.
- 5.4 Hearings shall be arranged to commence as soon as is reasonably practicable after the expiry of any period for representations. If the hearing is to be held on more than one day it must be arranged to take place on consecutive working days.

6. NOTIFICATION OF HEARINGS

- 6.1 Interested Parties shall be notified of the hearing in accordance with the timescales set out in the Regulations. Information to accompany the notice of hearing shall be provided in accordance with the Regulations, and shall include:
 - a copy of this Protocol;
 - confirmation that a Party may be assisted or represented by a person whether or not that person is legally qualified;
 - confirmation that a Party to the hearing may address the Authority, give further information on a point on which the Authority requires clarification and, if considered by the relevant committee to be required, question another Party to the hearing;
 - the consequences of not attending or being represented at a hearing (which normally will be that the hearing will proceed in the Party's absence); and
 - a note of any particular points on which the Authority wants clarification.
- 6.2 In order to consider whether there are any issues of clarification to be requested from Applicants or those making representations, Members of the relevant committee may meet with the Clerk and/or Legal Adviser in advance of the hearing. No decisions will be made or discussions held regarding the substantive merits of the application or submissions at this meeting.
- 6.3 Subject to any restrictions in the Regulations, a Party may attend the hearing and may be assisted or represented by any person whether or not that person is legally qualified.
- 6.4 All Parties upon whom a notice of hearing has been served are required to give to the Authority, in accordance with the timescales set out in the regulations,

notice of:

- whether they wish to attend, address, or to be assisted or represented at the hearing;
- whether or not they consider a hearing to be unnecessary; and
- whether they wish to request that another person appear at the hearing (other than their representative). If such a request is made, it should be accompanied by details of the name of that person and a full description of the points about which that person may be able to assist the Authority.

6.5 The Authority may dispense with the requirement to hold a hearing if all Parties agree that such a hearing is unnecessary provided (1) all the Parties involved in the application agree to dispense with a hearing and (2) all Parties have each notified the Authority that a hearing is unnecessary. Where all the persons required by the Act to agree that a hearing is unnecessary have done so in accordance with paragraph 6.4 above, the Authority, if it agrees that a hearing is unnecessary, shall as soon as is reasonably practicable, give notice to the Parties that the hearing has been dispensed with and proceed to determine the application or review. Once the application has been determined the Authority will notify the Parties of its decision forthwith.

6.6 Subject to the requirement to determine an application within the timescale set out in the regulations and to any other restrictions contained in the Regulations, the Authority has the power to extend a time limit specified in the Regulations for a specified period where it considers this is necessary in the public interest, or to adjourn a hearing to a specified date. Where the Authority has exercised its discretion to extend a time limit or adjourn a hearing, it must forthwith give notice to the Parties, stating the period of the extension and the reasons why it considers it is necessary in the public interest, or the date, time and place to which the hearing has been adjourned, as appropriate.

7. FAILURE OF PARTIES TO ATTEND THE HEARING

7.1 If a Party, who has not given prior notice of his/her intention not to attend the hearing, is absent from the hearing or has left the hearing in circumstances which would enable the relevant committee to reasonably conclude that he does not intend to participate further, the relevant committee may either adjourn the hearing or hold the hearing in the Party's absence. Where the hearing is held in the absence of a Party, the relevant committee will still consider the application, representation or notice submitted by that Party.

8. OFFICERS TO ATTEND THE HEARING

8.1 The hearing will be attended by a Legal Officer, a Democratic Services Officer who shall act as the clerk, and a Licensing Officer. The officers are present to provide advice and are not Parties to the hearing.

8.2 The role of the Legal Officer is to provide legal advice relating to the application and submissions. Any legal advice that may be given to the relevant committee in private shall be repeated when the relevant committee returns in open session.

8.3 The role of the Clerk is to record the hearing and the decisions of the relevant

committee, and ensure efficient administration.

9. LICENSING OFFICER'S REPORT TO THE RELEVANT COMMITTEE

- 9.1 The Licensing Officer shall prepare a report for consideration by the relevant committee including:
- a brief summary of the application;
 - a brief summary of representations by responsible authorities and Interested Parties;
 - relevant aspects of the Council's Statement of Principles and National Guidance;
 - other information as appropriate and as included in the Council's standard report format.
- 9.2 The Licensing Officer's report shall be sent to the Parties and will be accompanied by the relevant documentary material that has been submitted by the Parties.
- 9.3 After having heard the representations and prior to retiring to make its decision the relevant committee may, if it wishes, seek the guidance of the licensing officer regarding possible suitable conditions in respect of any particular application.

10. REPRESENTATIONS

- 10.1 An Interested Party or Responsible Authority may make written representations about an application for a premises licence within a period of 28 days beginning on the date on which the application was made to the Authority. A copy of all relevant representations will be provided, in full, to the Applicant. The papers for the relevant committee hearing will be available to the press and public. Correspondence submitted anonymously will not be considered.
- 10.2 Relevant committee members will not enter into correspondence or discussion with Applicants, their agents or representatives, other Interested Parties or Responsible Authorities about the merits of the application(s) they may be called upon to decide.
- 10.3 Where an application is to be decided at a hearing by the relevant committee, Applicants and those who have made relevant written representations in connection with the application will be invited to attend.
- 10.4 Representations or requests for review will only be relevant if they relate to one or more of the three licensing objectives:
- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
 - Ensuring that gambling is conducted in a fair and open way; and
 - Protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 10.5 At the hearing a Party shall be entitled to:
- address the relevant committee on any relevant matter;

- call witnesses to give evidence on any relevant matter;
 - give further information in response to a point upon which the Authority has given notice that it will want clarification; and
 - if given permission by the relevant committee, question any other Party.
- 10.6 Members of the relevant committee may question any Party or other person appearing at the hearing.
- 10.7 Statements made by people in support of a Party's representation who are not present at the hearing, must be signed by the maker, dated and witnessed by another person. The statement must also contain the witness's full name and occupation.
- 10.8 A Party who wishes to withdraw any representations they have made, may do so by giving written notice to the Authority no later than 24 hours before the day on which the hearing is scheduled to be held, or orally at the hearing.
- 10.9 The relevant committee has the discretion to consider whether to take into account any documentary or other evidence produced by a Party before the hearing. Any documentary or other evidence produced by any Party in support of an application, representations or notice of hearing, which has not been produced before the hearing can only be heard with the consent of all other parties present, and the relevant committee. During the hearing no new matters may be raised without the express consent of the Chair of the relevant committee.

11. HEARINGS TO BE OPEN TO THE PUBLIC

- 11.1 The hearing will take place in public. However, the relevant committee may decide that all or part of the hearing will be in private if it is necessary in all the circumstances of the case having regards to:
- any unfairness to a Party that is likely to result from a hearing in public; and
 - the need to protect as far as possible, the commercial or other legitimate interests of a Party.
- 11.2 The relevant committee may require any person attending the hearing who in their opinion is behaving in a disruptive manner, or in breach of conditions specified under this paragraph, to leave the hearing and:
- refuse to permit him to return; or
 - permit him to return only on such conditions as the relevant committee may specify.

The relevant committee may allow a person who is attending the hearing and in their opinion is behaving in a disruptive manner, or in breach of conditions specified under paragraph (11.2), to remain at the hearing only on such conditions as the committee may specify.

Where a person is required to leave the hearing in accordance with paragraph (11.2), the relevant committee must:

- permit him to submit in writing, before the end of the hearing, any information which he would have been entitled to give orally had he not been required to leave; and
- take into account that information in reaching a determination of the application or review.

11.3 The relevant committee may retire into private session during or at the end of the hearing to deliberate on any matter or decide how it wishes to determine the application. The relevant committee may be accompanied by the Clerk and the Legal Adviser who will be available to assist the relevant committee with any legal problems but will not participate in any decision making of the relevant committee.

12. DETERMINATION OF APPLICATIONS

12.1 Normally the relevant committee shall make its determination at the conclusion of the hearing and in all cases the relevant committee shall make its determination before the end of five working days starting with the day after the last day of the hearing. That time limit may be extended if it is considered to be in the public interest, in which case, as soon as is reasonably practicable, the relevant committee must give notice of the extension to the Parties stating the period of the extension and the reasons for it.

12.2 Where all Parties have notified the Authority that a hearing is not required and the Authority agrees that a hearing is not required, the application shall be determined as soon as is reasonably practicable.

12.3 The relevant committee shall give reasons for its decision and these shall be recorded in the minutes of the meeting.

12.4 The Authority shall notify Parties of its determination, and provide any accompanying information in accordance with the Regulations. The Chief Officer of Police shall also be notified even in a case where the Police have not made a representation.

13.1 RECORD OF PROCEEDINGS

13.1 The Authority shall keep a record of the hearing in a permanent and intelligible form for 6 years from the date of the determination or, where an appeal is brought against the determination of the authority, from the disposal of the appeal.

14. CODE OF CONDUCT AND PRINCIPLES OF DECISION-MAKING

14.1 Members shall at all times comply with the provisions of the Members' Code of Conduct.

14.2 In making their determinations under the Act, Members shall have regard to:

- the material relevant facts in light of the evidence presented;
- the relevant statutory provisions;
- relevant national guidance and the policy statement;
- the licensing objectives; and
- the individual merits of the case.

14.3 Applications shall be determined on the basis of whether they promote the licensing objectives in the Act, namely:

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
- Ensuring that gambling is conducted in a fair and open way; and
- Protecting children and other vulnerable persons from being harmed or exploited by gambling.

14.4 The relevant committee shall disregard any information or evidence given which is not relevant to the application, representations or notice; or to the promotion of the licensing objectives.

14.5 Decisions must not be influenced by any political party direction whether given at a previous party group meeting or otherwise.

14.6 Members of the Licensing Committee or its Sub-Committee(s) must act without bias or predetermination, must have no disclosable pecuniary interest in any application before them, and must keep an open mind on all applications until they have considered all of the evidence and arguments presented. They shall not take or express any view on the merits of an application, nor organise support for or opposition to any application in advance of a hearing. Any Member who does so shall not be eligible to serve on the relevant committee meeting that hears the application.

15. MEMBERS' INTERESTS: GENERAL

15.1 Members must at all times comply with the Members' Code of Conduct in relation to the disclosure disclosable pecuniary interests, participation in relation to disclosed interests and registration of financial and other interests and of gifts and hospitality.

16. MEMBERS' INTERESTS: MEMBERS OF THE LICENSING COMMITTEE

16.1 A Member of the relevant committee who has been involved in a licence application shall not serve on the relevant committee hearing at which the licence application is to be determined.

16.2 No Member sitting on the relevant committee can represent one of the interested parties or applicant. If a Member wishes to do so s/he must excuse him/herself from membership of the relevant committee which is considering the application and address the relevant committee as a representative for an Interested Party (subject to 17.2 below).

16.3 Members involved in Council meetings which approved the Licensing Policy (or any amendment to it), will not be excluded from membership of the relevant committee solely on this basis.

17. MEMBERS' INTERESTS: WARD MEMBERS AND OTHER MEMBERS

- 17.1 Under the Members' Code of Conduct a Member who has a disclosable pecuniary interest must, if the interest is not one which is already on the register of interests or subject to a pending notification to the Monitoring Officer, disclose the existence of that interest to the meeting and thereafter notify the Monitoring Officer of that interest within 28 days of this disclosure.
- 17.2 Where a Member has a disclosable pecuniary interest in relation to the application under consideration they may not sit on that sub-committee.
- 17.3 Any Member with a disclosable pecuniary interest is also precluded from making representations orally to the Sub-Committee or from making representations on behalf of a party to the hearing. They can still present their views through other means. For example, the Member can:
- make written representations in their private capacity. The existence and nature of the interest should be disclosed in such representations and the Member should not seek preferential consideration for their representations. Such written representations should be addressed to officers rather than other Members of the Authority;
 - use a professional representative to make an application on the Members behalf; or
 - arrange for another Member of the Authority to represent the views of the Member's constituents on matters in which their ward Member has a disclosable pecuniary interest.
- 17.4 The Member who has a disclosable pecuniary interest but has been asked to represent the views of a party making representations should advise them about that interest and inform them that another Member may represent their views on the issue. When representing those views the other Member should make it clear to the relevant committee or officers that he or she is acting in place of the original Member because of that Member's disclosable pecuniary interest.

18. LOBBYING

- 18.1 If a Member of the relevant committee is approached by a person(s) wishing to lobby him/her on a licence application then that Member should explain that they cannot discuss the matter and refer the lobby person(s) to the Licensing Officer or his/her Ward Member who can explain the process of decision making. Any written representations received by a Member of the relevant committee should be passed to the Licensing Officer and reported at the hearing at which the application is being determined. Requests for procedural advice with regards to licensing applications should be referred to Council Officers for advice and information.
- 18.2 Other Members must not lobby Members who sit on the relevant committee, directly or indirectly, before or after a meeting, in writing or otherwise, in respect of items to be decided by the relevant committee. Any representation by other Members, on behalf of an Interested Party, should be sent to the relevant Licensing Officer for inclusion in his/her report. A Member shall not attempt to use her/his status as a Member to influence consideration of a submission, or try to get officers to change a decision or recommendation.

19. SITE VISITS

- 19.1 The relevant committee may undertake a site visit to the premises which are the subject of an application. If required, the site visit may occur prior to the hearing or the relevant committee may adjourn the hearing part way through to undertake a site visit. The Chair of the relevant committee shall give reasons justifying the need for a site visit and these shall be notified to the Parties.
- 19.2 If a site visit is necessary the following procedure should be observed:
- the visit should be undertaken as a group visit attended by all the relevant committee Members and its purpose should be confined to that indicated by the Chair;
 - the visit should be attended by an officer who may be asked factual questions by the Members;
 - no indication of the likely outcome of the application should be given on the visit;
 - no representation from the applicant or from those making representations shall be heard or accepted on the visit; and
 - a record should be kept of those attending the visit, the questions asked, and answers given.

20. APPLICATIONS SUBMITTED BY THE LOCAL AUTHORITY OR BY ANOTHER PUBLIC AUTHORITY

- 20.1 Where the Authority is the applicant for a licence, that application shall be determined in accordance with the normal procedure. The relevant committee shall give no regard to the interests of the Council itself, aside from receiving relevant representations on this issue. Members who were part of the Authority's decision to apply for the licence, or who express a view in respect of such an application, shall not serve on the relevant committee to determine the application.
- 20.2 A Member who also serves on another local authority, or carries out a function for another public authority, or is appointed by Croydon Council as its representative on another body, shall not serve on the relevant committee to determine an application which has been made by that other authority or body, or on which that other authority or body has made a representation.

21. VARIATION/AMENDMENT OF THIS PROTOCOL

- 21.1 The relevant committee may waive, vary or modify any part of this protocol in relation to a particular case if it considers that this is necessary to ensure fairness to the Parties and/or proper consideration of the application in question, provided always that this does not result in any contravention of the Regulations.
- 21.2 This protocol may be amended by the Licensing Committee.
- 21.3 Where amendments to this Protocol are necessary due to legislative changes, the Council Solicitor, Director of Democratic and Legal Services may make

such consequential changes to this Protocol as are necessary to take such changes into account.

ANNEX 1 - Procedure for Licensing Sub-Committee Hearings

Note: (1) This procedure shall normally be followed for all Hearings held by the Licensing Sub-Committee(s). The Chair may vary the procedure in respect of any hearing if he/she considers that this would facilitate the proper consideration of the application or notice before the relevant committee.

Note: (2) The hearing shall take the form of a discussion led by the relevant committee. Cross-examination shall not be permitted unless the relevant committee considers that cross-examination is required for it to consider the representations, application or notice before it.

1. The relevant committee will elect a Chair from amongst their number
2. The Chair will introduce those present, Parties to indicate their names and who they represent. Chair to ascertain who will speak.
3. The Chair of the relevant committee will inform the Parties whether their applications to have certain people attend the hearing (e.g. witnesses) have been granted or refused (Note this relates to people other than those attending on behalf of a Party in the capacity as a representative of the Party).
4. The Chair will explain to the Parties the procedure to be followed at the hearing and to consider any request made by a Party in accordance with the Regulations for permission for another person to appear at the hearing (Such permission shall not be unreasonably withheld).
5. The relevant committee will confirm or vary the time limits set out below to be applied to contributions from the Parties (Note: under the Regulations an equal maximum time period must be allowed to the Parties to exercise their rights under the Regulations).
6. The Chair will summarise the paperwork before the relevant committee and confirm that all present have copies; will ascertain whether any representations have been or are now to be withdrawn, and will hear any requests to adduce additional documentary or other information.
7. The Licensing Officer will outline:
 - details of the application and relevant representations received from the Parties; and the outcome of any discussions
 - relevant legislation;
 - relevant Licensing Policy; and
 - the time limit in which the Council must reach a determination.
8. The Chair will invite each of the parties or their representative in turn to address the relevant committee and call any person/s to whom permission has been granted to appear. Each Party will be allowed a maximum period of 10 minutes in which to address the relevant committee and call persons on his/her behalf, and clarify any points on which the relevant committee has sought clarification prior to the hearing. This 10 minute period should be uninterrupted unless a member of the relevant committee or Legal Adviser considers that the speaker is making submissions that are irrelevant, frivolous or vexatious.

9. Members of the relevant committee or their Legal Adviser may ask questions of any party, at any time throughout the proceedings.
10. The sequence in which each of the Parties will be invited to address the relevant committee will normally be in the order of:
 - the Gambling Commission
 - the Police;
 - the Fire Authority;
 - the Licensing Authority
 - Her Majesty's Revenue & Customs (HMRC);
 - the Local Planning Authority;
 - the Local Environmental Health Authority – Noise and Nuisance Officers;
 - the Authority Responsible for the Protection of Children from Harm;
 - any other Interested Party that has submitted representations in respect of the application, certificate, notice or other matter appearing before the relevant committee (if there are a large number of Interested Parties present who are making relevant representations they may be invited to share the maximum time available or to nominate a spokesperson to speak on their behalf).
 - the Party that has submitted the application, certificate, notice or other matter appearing before the relevant committee.
11. At the discretion of the relevant committee the above order may be varied.
12. Parties may give their evidence by making a statement or if appropriate by being questioned by the person calling them.
13. If the relevant committee considers that cross-examination is required for it to consider the representations, application or notice as the case may require, a period of up to 5 minutes cross-examination shall be allowed after each submission.
14. The relevant committee will then ask any outstanding points requiring clarification.
15. The Chair will ask the Applicant whether in the light of any representations made, they wish to amend their application or offer any additional conditions to overcome the representations and/or promote the licensing objectives.
16. If the Applicant makes any comments in relation to 15 above, the relevant committee will ask the other Parties whether they wish to make any further comment in relation to any amendment or additional comments offered by the Applicant.
17. The Chair will invite the Parties to indicate if they wish to make any final comments. If any Party wishes to do so they will be given a maximum of 3 minutes to do so and the other Parties will be given the same maximum period, finishing with the Applicant.
18. The relevant committee will deliberate on and determine the matter under consideration. The relevant committee may withdraw to a private room to do

this.

19. The relevant committee will return to open session. The Chair will ask the Legal Adviser to inform the Parties of any legal advice given during the relevant committee's private discussion that has informed their decision.
- 20 The Chair will then announce in open session to all Parties the decision of the relevant committee and reasons, unless (where permitted by the Regulations) the decision is to be communicated at some later time.