

**IN THE MATTER OF THE LICENSING COMMITTEE □WARD
COUNCILLOR HEARING AN APPLICATION IN HIS/HER WARD AND
NUMBER OF SUB-COMMITTEES**

ADVICE

1. I am asked to advise on two matters, firstly whether a member of the licensing sub-committee should take a decision in relation to premises within their Ward and whether there should be more than one licensing sub-committee. I will deal with each matter separately

Background

2. Prior to Local Government Reorganisation both Mid Beds District Council (“Mid Beds”) and South Bedfordshire District Council each had a licensing committee with sub-committees, however they differed in their approach as to whether a Ward Member should take a decision of the sub-committee in relation to premises within their Ward. South Bedfordshire Council did not permit the Ward Member of the licensing sub-committee to take a decision whereas Mid Beds permitted such a role to be taken.

3. The difference to the two approaches appears to be based on Lacors Guidance¹ that allowing a ward member to determine licensing applications within his/her Ward was to be discouraged on the grounds of potential breaches of the Members Code of Conduct and the risk of the perception of bias or predetermination by the Councillor in question.

4. Mid Beds took Counsel's advice who advised that while appreciating the view taken by Lacors, there was no impediment in law to prevent a ward member from so determining an application, and consequently Mid Beds permitted a Ward councillor in such a position to form part of the licensing sub-committee and to determine such an application.

5. Central Bedfordshire Council has a licensing committee comprising of 12 members and one sub-committee comprising of 3 members.

Ward Member

6. There is no legal impediment to a member taking a decision on a licensing application that falls within that Members Ward. However in determining any such application that Member (the Code imposes a liability on the Member personally) *must* be aware of and adhere to the Code of Conduct and be aware that in determining such an application there is potential exposure to an allegation of bias and/or predetermination. There potential risk is at the expense

¹ Lacors Guidance: The Role Of Elected Members In. Relation To Licensing Committee Hearings

of the omission of the relevance of and assistance to the sub-committee by the Members' local knowledge. There are a number of Councils who do allow such Ward Members to sit and determine such applications and those that do not, it is a matter of choice for each Council.

More than one Sub-Committee

7. Prior to Local Government Reorganisation both District Councils had a number of licensing sub-committees. However the large number of sub-committees was deemed necessary at the time following the coming into force of the Licensing Act 2003 and the expected flood of applications that the respective Council would receive. To a large extent that expected flood never materialised and has since levelled off to a steady flow of applications for determination by Members.
8. The Council is a living body and can and often does adjust to the pressures before it in order to fulfil demand and provide the best public service as it is able to its customers. Consequently if the level of applications were to increase then so could the number of sub-committees to deal with any increase. I have no information that demand warrants any additional licensing sub-committees at this time.
9. The current position operates whereby the licensing sub-committee of 3 Members is appointed from the 12 Members of the Licensing Committee. It is for the Licensing Committee to determine how those Members are selected, for

example alphabetically or rotation to ensure regular sub-committee sittings for all Members. In practice selection is often determined by availability, where one Member is unavailable another Member acts as substitute to ensure the sub-committee is quorate.

Conclusion

10. In conclusion there is nothing to prevent a Member determining a licensing application in that Member's Ward, although that Member will need to be aware of the Code and the objective perception of bias/predetermination. Regarding further sub-committees I am not aware of any reasonable grounds to increase the number of licensing sub-committees at this time; if the concern is to the system used to select those sub-committee members that is a separate issue that can be looked at independently of this advice.

11. I trust I have dealt with your queries, however if you would like to discuss any of the matters raised, or I can be of further assistance, please do not hesitate to contact me.

Marc Ronan
Managing Solicitor
25 June 2009