

Standard Operating Procedures for Sub-Committee Hearings under the Licensing Act 2003.

These standard operating procedures have been developed to help Responsible Authorities (“RAs”) understand what the Licensing Authority expects both before and during Sub-Committee hearings under the Licensing Act 2003 (“the Act”).

1. Representations against applications for or variations of premises licences

The Licensing Authority accepts that there is a low threshold for what is considered a relevant representation. The Act does not require a full pleading or evidential recital in the representation. The representation must simply be about the likely effect on the licensing objectives.

However, this does not mean that the Licensing Authority cannot encourage more details being provided. By doing so, this helps the applicant/premises licence holder to understand and respond to what the true concerns actually are.

The Licensing Authority has, therefore, created the following checklist of matters it expects to be addressed in any representation submitted.

It is acknowledged that this is not a legal requirement, rather it is guidance, which will assist in the fair and efficient disposal of the application.

- (1) Which licensing objective(s) the representation concerns.
- (2) Whether any representation is in relation to the activities, the hours, the applicant / licensee or the conditions.
- (3) Under each objective, the reasons and evidence relied upon, including, as appropriate:
 - (a) Factors concerning the location.
 - (b) Factors concerning the applicant.
 - (c) Factors concerning the DPS (police only).
 - (d) Factors concerning the history of the premises.
 - (e) Factors concerning the proposed activities.
 - (f) Factors concerning the timing of the activities.
 - (g) Factors concerning the proposed conditions.

(h) What, if any, added or amended conditions, hours or activities would resolve the RA's concerns.

(4) The reasons why answers have not been given to any of the above questions.

If the above is not provided, a notice of hearing pursuant to regulation 7(1)(d) of the Licensing Act 2003 (Hearings) Regulations 2005 ("the Regulations") may be served setting out any particular points on which the Licensing Authority considers it will want clarification at the hearing.

2. Applications for review of a premises licence

Except in urgent cases, RAs should only submit an application for review after informal attempts have failed.

As per paragraph 11.10 of the s.182 statutory guidance, the Licensing Authority expects RAs to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence holder of the steps they need to take to address those concerns.

Similar to representations against applications and variations, the bar for a valid review application is set very low, it simply needs to relate to one (or more) of the licensing objectives.

If it becomes necessary to submit an application for review because the licence holder has failed to respond to informal warnings, below is a checklist of matters the Licensing Authority expects to be included in the application.

Again, it is acknowledged that this is not a legal requirement, rather it is guidance, which will assist in the fair and efficient disposal of the application.

- (1) Which licensing objective(s) the review concerns.
- (2) Evidence to support the review.
- (3) Evidence of informal attempts to engage with the licence holder and the outcome of these attempts.
- (4) Desired outcome (e.g. modified conditions, exclusion of licensable activity, removal of DPS, suspension or revocation)

3. Supporting material

Service of supporting material late is unfair. It imposes intolerable burdens not only on the applicant/premises licence holder, whose business future may turn on the decision

and who will be under pressure, while preparing its own case, to reply practically instantly, but also on the Sub-Committee itself and the officers who have to digest and assemble the paperwork.

Set out below is guidance on the time frames within which the Licensing Authority expects supporting material to be provided. Material that is not provided within these time frames will be excluded without a reasonable explanation or an exceptional case.

- (1) Any evidence against the premises should be submitted no later than 8 working days before the hearing.
- (2) Evidence from the premises in reply should be submitted no later than 5 working days before the hearing.
- (3) Written arguments on behalf of any party (if the party chooses to rely on a written argument) should be submitted no later than 3 working days before the hearing.

4. Mediation

In the event that RAs are able to mediate with the applicant/premises licence holder in advance of the hearing and reach an agreed position (e.g. agreed conditions), the Licensing Authority expects the RAs to notify the Licensing Authority as soon as possible and provide the terms of that agreement (i.e. provide a notice under regulation 9(1) of the Regulations).

This will enable the Licensing Authority to consider the agreed position and determine if a hearing is necessary. If the Licensing Authority decides a hearing is not necessary, it will notify the RAs (i.e. provide a notice under regulation 9(2) of the Regulations).

In the event that persons other than RAs (e.g. members of the public) have made representations, they will also need to agree that the hearing is not necessary. If this agreement is not obtained, the hearing must still go ahead.

If a hearing must still go ahead, only RA's that have not successfully mediated need to attend the hearing. RA's that have successfully mediated can notify the Licensing Authority that, in light of their successful mediation, they will not be attending the hearing. RA's that have successfully mediated, can still attend and participate in the hearing should they wish.

5. Mediation – Reviews

Unlike for applications and variations, review hearings cannot be abandoned on terms. The Licensing Authority is required to hold a hearing to consider the application and any representations.

If parties who have reached agreement through mediation wish to avoid a review hearing, the applicant will need to withdraw the review on terms that the premises licence holder applies for a minor variation of the premises licence to incorporate the new conditions.

6. Communication between parties

The Licensing Authority also encourages parties to talk to each other in advance of the hearing to:

- (1) set a timetable (if the timetable set out in section 3 cannot be adhered to) to ensure that neither party is disadvantaged;
- (2) agree evidence, wherever possible; and
- (3) mediate/negotiate so that they can agree conditions or other means of disposal of the case wherever possible.

7. Publication of Representations

Papers for Sub-Committee hearings will be published on the Council's website.

If any RA intends to rely on material which it believes should not be published (though should still be considered by the Sub-Committee), it is the responsibility of that RA to submit a redacted copy of the material and to inform the Licensing Authority the reason for and legal basis for the redaction for consideration by the Licensing Authority.

RA should equally notify the Licensing Authority if any material should not be disclosed to the applicant/premises licence holder or any other party and again, provide a redacted copy and set out the reason for and legal basis for the redaction for consideration by the Licensing Authority.

Failure to provide redacted copies will result in the unredacted version being published.

If the need to carry out redactions results in papers not being provided within the time frames set out in section 3, the Licensing Authority may exclude the material, as carrying out redactions is unlikely to be considered a reasonable excuse or an exceptional case.

If any person attending the hearing, including the press, consider that the material should not be redacted, it can ask for the matter to be considered, and the Sub-Committee (having taken legal advice) will decide whether the material should remain redacted.

8. Attendance at hearings

If a party fails to attend or be represented at a hearing, the Licensing Authority may adjourn the hearing, if it considers it to be in the public interest to do so, or hold the hearing in the party's absence.

9. Temporary Event Notices – Objection Notices

Only police and the environmental health authority (“relevant persons”) may make objections to temporary event notices.

Unlike representations against an application or variation and unlike review applications, it is not enough to say that an objection notice relates to the licensing objectives. It must:

- (1) state that the objecting party is satisfied that allowing the premises to be used in accordance with the notice would undermine a licensing objective; and
- (2) must give a notice stating the reasons for being so satisfied.

If an objection notice does not comply with the above two requirements, it will be rejected.

Relevant persons are entitled to seek further details regarding proposed temporary events, although they are reminded that the temporary event notice procedure is intended to be light touch, and so details sought should be required in order to assess whether the event may proceed consistently with the licensing objectives.

The premises user and a relevant person who has lodged an objection notice may agree to modify the temporary event notice before a hearing is held or dispensed with by agreement. The modification procedure is for the purpose of modifying the notice itself. It cannot be used to add conditions to the notice.

Where an objection notice has been served, the licensing authority may impose one or more conditions on the notice if the following requirements are satisfied:

- (a) the authority considers it appropriate for the promotion of the licensing objectives to do so,
- (b) the conditions are also imposed on a premises licence or club premises certificate that has effect in respect of the same premises, or any part of the same premises, as the temporary event notice, and
- (c) the conditions would not be inconsistent with the carrying out of the licensable activities under the temporary event notice.

Relevant persons who have served objection notices are encouraged to seek to discuss and agree modifications and conditions, in keeping with the light touch nature of the temporary event notice procedure, and to reduce the need for contested hearings.

There is no power to agree modifications or conditions for late temporary event notices. Following an objection notice to a late temporary event notice, the licensing authority must give the premises notice a counter-notice.