

## **PROTOCOL (C) – DISCLOSURE OF REPRESENTATIONS**

### **Purpose**

1. The purpose of this Protocol is to set out the Licensing Authority's practice on the Disclosure of Representations.

### **Right to Make Representations**

2. Any person can make representations in respect of a Licensing Application but there are important rules that need to be followed or else the Licensing Authority may not be allowed to take them into account.
3. If the Council receives "relevant representations" to an application for a premises licence, provisional statement, variation of a premises licence, minor variation of a premises licence, review of a premises licence, club premises certificate, variation of a club premises certificate, minor variation of a club premises certificate, review of a club premises certificate, the Council must hold a hearing to consider them. If no "relevant representations" are received, the Council must grant the application. It has no choice.
4. "Relevant representations" must:-
  - a. Be about the likely effect of the grant or issue on the promotion of the licensing objectives;
  - b. They must be made by a responsible authority or any other person (e.g. a resident, neighbour, business, councillor);
  - c. They must be made within the prescribed period;
  - d. They must not have been withdrawn;
  - e. In the cases of representation made by any person who is not a responsible authority, they must not be frivolous or vexatious (in the opinion of the Licensing Authority);
  - f. If they relate to the identity of the proposed premises supervisor, they can only be made by the police and must comply with section 18(9)(b) of the 2003 Act;
  - g. If the application is for a premises licence following the issue of a provisional statement for a similar activity, the representation must not be excluded under section 32 of the 2003 Act, because they could have been made at the time of the application for a provisional statement.

### **Time Limits**

5. The time limits for making representations are strict. Most representations must be made at any time during a period of 28 consecutive days starting on the day after the day on which the application was given to the Licensing Authority by the Applicant (there is a shorter period in the case of Reviews following a Closure Order). This means:-

<b>Day</b>		<b>Examples</b>	
0	Day application given to the Licensing Authority	Tuesday, May 7	Friday, August 9
1	Next day	Wednesday, May 8	Saturday, August 10
...	Count 28 days	...	...
28	Last day to make representations	Tuesday, June 4	Friday, September 6

6. In the case of an application for review following a closure order, the time limit is shorter. Representations must be made at any time up to and including seven days starting on the day after the day on which the Licensing Authority received notice in relation to the closure order and any extension to it.

#### **What if my representations are late?**

7. You should assume that late representations will not be considered and ensure that your representations are received in time.

#### **- No one has made any relevant representations in time**

8. If no relevant representations are made in time by anybody, there will not be a hearing and the Licensing Authority **MUST** grant the application. Late representations will not be considered in these circumstances.

#### **- Somebody has made relevant representations in time and others have made late representations**

9. If relevant representations are made by somebody in time, there will usually be a hearing, unless they are withdrawn or unless the Licensing Authority, the Applicant and each person who has made relevant representations in time agree that a hearing is unnecessary. Someone who made late representations will not be a party to the hearing, will not have a right to appear at the hearing (except as a member of the public observing the hearing), and the Licensing Authority is not obliged to have regard to their late representations.
10. If there is a hearing, the Licensing Authority considers that it has a discretion to consider late representations provided that they are otherwise relevant. They must be about the effect on the promotion of the licensing objectives and not be frivolous or vexatious. The Licensing Authority feels that if its discretion is engaged, good decision making requires that it considers all

material circumstances before a decision is made. The licensing Authority will approach the exercise of its discretion in the following manner:-

- a. Your written late but otherwise relevant representations will be included in the papers for consideration at the hearing;
- b. You will not have the right to appear and participate in the hearing;
- c. You may request the right to appear and participate in the hearing. If you want to appear and participate in the hearing, you should tell the Licensing Authority five working days before the date of the hearing. The Licensing Authority will notify the Applicant and the other parties about your request. The Hearing will consider your request and make its decision as part of the preliminary business. It will listen to your reasons for the request and the views of the Applicant and other parties, before making a decision.
- d. In exceptional cases, the Licensing Authority may of its own accord consider that you should have a right to appear and participate in the hearing without the need for you to make a request. This is only likely to be the case where you raise significant issues not raised by anyone else and where it would be an affront to good decision making to consider them without a discussion at a hearing in which you are allowed to participate. In such exceptional circumstances, both you, the Applicant and other parties will be notified of the Licensing Authority's initial view five days before the hearing. The Hearing will consider the issue and make its final decision as part of the preliminary business. It will listen to your views and the views of the Applicant and other parties, before making a decision.

### **Representations must be in writing or email**

11. Representations must be in writing or by email (unless made by a responsible authority in relation to a minor variation).

### **When are Representation made?**

12. Representations must be MADE within the prescribed period (i.e. received by the Licensing Authority).
  - a. If representations are made by e-mail, this will be the time when a clear and legible email is delivered to the Licensing Authority which is capable of being accessed, read and printed.
  - b. In the case of a hard document, it must be addressed to the Licensing Authority and left at or sent by post to the Civic Centre.
  - c. If the document is left at the Civic Centre, it must be left at the Civic Centre within the prescribed period.

- d. If the document is sent by post, it must be delivered to the Civic Centre within the prescribed period. It must be properly
- addressed
  - with postage (first or second class) pre-paid
  - posted

Unless the contrary is proved, it will be deemed to have been made at the time at which the letter would be delivered in the ordinary course of post.

This means that you need to post it so that the usual expectation was that it would have been delivered to the Licensing Authority within the prescribed period, depending on whether you sent it first or second class.

You must of course take into account days when there is no usual postal delivery such as Sundays and Bank Holidays. If you expect something to be delivered within two days, it would not be appropriate to post it on a Saturday when the following Monday is a Bank Holiday. Delivery in the ordinary course of post would be deemed to be on the following Tuesday.

- e. To avoid problems, you should make your representations promptly and not wait until the last moment.

### **What will happen to representations once they are received?**

13. The Licensing authority will consider your representations and decide whether or not they are “relevant representations”.
14. We will consider whether the representation is about the likely effect of the grant or issue on the promotion of the licensing objectives. Representations by a local businessperson about commercial damage caused by competition would not be relevant. Representations by a local businessperson that nuisance caused by new premises would deter customers, and the steps proposed to prevent the nuisance were inadequate, would be relevant.
15. If we consider that they are not relevant to the licensing objectives, we will tell you in writing what are our reasons for that decision as soon as possible before making a decision on the application.
16. We will also consider whether or not the representations are frivolous or vexatious. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, without reasonable cause or justification. Frivolous representations would be essentially categorised by a lack of seriousness. They would also cover minor issues in relation to which

no remedial steps would be warranted or proportionate.

17. If we consider that they are frivolous or vexatious we will tell you in writing what are our reasons for that decision as soon as possible before making a decision on the application.
18. In borderline cases, we will give you the benefit of the doubt.
19. The fact that we have not rejected a representation at this stage does not mean that we have decided that the representations are justified. It simply means that there will be a hearing at which you, the Applicant, responsible authorities and other persons who have made representations will be able to amplify and clarify their views, before a final decision is made.
20. If you disagree with our decision, you may complain through our corporate complaints procedure. You may also challenge our decision by judicial review.

**Will my representations be made public and will the Applicant be told about them?**

21. There are three provisions that mean that your representation may be made public:-
  - a. The Licensing Act 2003 (Hearings) Regulations 2005;
  - b. Freedom of Information Act 2000, Data Protection Act 1998 and Environmental Information Regulations 2004.

**- The Licensing Act 2003 (Hearings) Regulations 2005**

22. Under these regulations, we must send copies of all relevant representations to the Applicant.
23. The regulations also say that all hearings shall take place in public (which means that your representations will usually become public) but that we can exclude the public from all or part of a hearing where we consider that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public.

**- Freedom of Information Act 2000, Data Protection Act 1998 and Environmental Information Regulations 2004**

24. These Acts and regulations contain further rights to access information held by the Licensing Authority. There are a number of exemptions that may apply. While it is unlikely that anyone would need to rely on this legislation to require access to your representations (since the provisions already referred to are extensive), you should be aware that this legislation could also apply to your representations and require the Licensing Authority to disclose them.

## **Licensing Authority's Approach to Disclosure of Your Representations**

25. The legislation referred to creates a presumption in fairness to the Applicant and in the public interest of transparency and openness that your representations will be disclosed to the Applicant and the public.
26. We will NOT usually EXCLUDE or REDACT any information that is given to the Applicant. As a matter of fairness, there is a presumption that an Applicant should be fully aware of the details of the persons who has made representations in relation to the application.
27. We will attempt however to EXCLUDE or REDACT certain sensitive information from information that is available for the public but not information that is given to the Applicant. This applies to:
  - a. Your signature;
  - b. Your telephone number;
  - c. Your email address;
  - d. Your postcode;
28. We will NOT usually EXCLUDE or REDACT your name and address. We consider that it will generally be in the public interest to be transparent and open as to who made representations.
29. We do however think that it will assist and avoid misunderstandings if persons making representations were to use the form attached to the Schedule to submit personal details with their representations.

### **Can I request that my details are not disclosed?**

30. We can decide to withhold more of your personal details (such as your name and address) and instead give only minimal details (such as your street name or general location within a street). However we can only do so where the circumstances justify such action. We cannot do this in all cases. We cannot set out all the circumstances that may be relevant. One example may be that you consider that you or your family might suffer some detriment were the details disclosed.
  - You must tell us why you feel that we should do this. The form in the Schedule has a place for you to do this.
  - If we decide that we cannot comply with your request, we will tell you and give you an opportunity to consider your position and/or withdraw your representation before we disclose it.

31. If you are reluctant to make representations because of fears of intimidation or violence if your personal details, such as name and address, are divulged, please tell us. Where we consider that you have a genuine fear of intimidation and may be deterred from making representation on this basis, we will consider if there is an alternative approach. One solution may be for you to give details to a responsible authority as to how you consider that the licensing objectives are being undermined so that the responsible authority can make representations if appropriate and justified. These will be exceptional circumstances. It may not be the case that your fears arise from divulging your details to the applicant; rather they may arise from divulging your details to the public arise. It may not be the case that you fear intimidation or violence from the applicant but rather from others; but that disclosure to the Applicant raises the risk of your details becoming widely known. Again:-

- What is important is that you tell us exactly what your fears are
- The form in the Schedule has a place for you to do this.
- If we decide that we cannot comply with your request, we will tell you and give you an opportunity to consider your position and/or withdraw your representation before we disclose it.

32. If either of these circumstances applies to you, you should contact us promptly and not wait until the time for making representations has almost expired.

33. It may be that the applicant disagrees with our decision. If so we will listen to their views. It may be that we change our mind. If we do change our mind having heard what the applicant has said, we will tell you and give you an opportunity to consider your position and/or withdraw your representation before we disclose it. It may be that we feel that the final decision should be made at the hearing rather than by Licensing Officers.

### **Am I likely to be contacted if I make representations?**

34. After relevant representations are made and before a hearing, applicants may wish to try and understand and/or address issues raised by the representations with a view to agreeing a way forward. This may result in the Applicant amending the application or proposing conditions. The Applicant will often wish to have discussions with persons who have made relevant representations. The Licensing Authority wishes to encourage such mediation with both responsible authorities and other persons. It will be beneficial and enable the hearing to focus on the more important issues where agreement has not been possible.

35. Residents who have made relevant representations may feel uncomfortable about engaging in discussions with applicants or their representatives. Such discussions should be non-confrontational and meditative. If residents begin to feel uncomfortable with the way the process is going, they are entitled to politely and non-confrontationally terminate the discussions. They can also tell the Licensing Authority about their concerns. We will consider whether we

can do anything about the concerns.

36. While we do encourage such discussions:-

- Persons are under no obligation to participate. They may decline to participate at all. They can state that on the form in the Schedule. They can also discontinue discussions at any time.
- Persons are entitled to state how they want such discussions to take place – by letter, email, telephone conversation and face-to-face discussion and what is the most convenient time. Again that can be stated on the form.



Ap. Ref.:	Rep. No.:
-----------	-----------

**Schedule**

**Form to be completed by persons making representations  
(Other than by Responsible Authorities)**

<b>My Name:</b>	
<b>My Address:</b>	
<b>* My Postcode of my address:</b>	
<b>My Address for correspondence (if different):</b>	
<b>* My Postcode for correspondence:</b>	
<b>* My Tel. No. (Day):</b>	
<b>* My Tel. No. (Evening):</b>	
<b>* My Mobile No.:</b>	
<b>* My E-mail address:</b>	
<b>The Premises Concerned are:</b>	

I wish to make representations in respect of the application in respect of these premises. The representations are attached.

I understand that my representations will generally be copied to the Applicant or their representatives and are likely to be made public by the Licensing Authority.

I also understand that the Applicant or their representative may contact me to discuss the representations.

The information marked with an asterisk (\*) will be redacted before this information is disclosed to the Applicant or made public, and will only be used by the Licensing Authority to contact me or as set out below.

**How I wish to be Contacted** (# - delete as appropriate † - tick all that apply)

I am happy to be contacted by the Applicant or their representative to discuss and try to resolve my concerns #

-or-

I do not wish to be contacted by the Applicant or their representative to discuss and try to resolve my concerns #

I prefer to be contacted: by personal visit  † by post  † by e-mail  † by telephone in the day  † by telephone in the evening  † by mobile phone  †

I prefer to be contacted: \_\_\_\_\_ (please state preferred time)

---

**Disclosure of Name and Address** (# - delete as appropriate † - tick as appropriate)

I have no objection to my Name and Address being disclosed. #/

-or-

I object to my Name and Address being disclosed to #-:

The Applicant  †

Another Responsible Authority  †

The Public  †

BECAUSE:

(Give a full explanation)

---

**Fear of Intimidation or Violence** (‡ - delete this section if not applicable)

I am reluctant to make representations because I fear intimidation or violence if my personal details are divulged BECAUSE ‡:

(Give a full explanation as to why you fear intimidation and violence and from who, you fear it. If you have any suggestions as to how these concerns can be addressed, please state them.) ‡

Signed: \_\_\_\_\_ Dated: \_\_\_\_\_

Ap. Ref.:

Rep. No.:

## Representations

**Premises:**

---

(Please write your representations here – continue on further sheets if needed)

Ap. Ref.:	Rep. No.:
-----------	-----------

**Form to be attached to representations by the Licensing Authority before disclosure**

<b>Premises:</b>	
------------------	--

The Person making representations does not want their personal details to be disclosed. The Licensing Authority is satisfied that they have put forward good reasons. The Licensing Authority therefore discloses the following minimal details:

(include details such as street name or general location within a street)

-or-

<b>Name:</b>	
<b>Address:</b>	
<b>Address for correspondence (if different):</b>	

The Person making representations does not wish to be contacted by the Applicant or their Representative

-or-

The Person making representations is willing to be contacted by the Applicant or their Representative. They prefer to be contacted by personal visit  † by post  † by e-mail  † by telephone in the day  † by telephone in the evening  † by mobile phone  †

(† - tick as appropriate)

The relevant contact details are:-

(include details for preferred method(s) of contact)

They prefer to be contacted \_\_\_\_\_  
(preferred time)