

PROTOCOL (I) – HEARINGS AT LICENSING COMMITTEE

Purpose of this Protocol

1. The purpose of this Protocol is to give guidance to Applicants, Relevant Authorities and other people who have made representations about what to expect at Hearings. It supplements the document “Procedure at Licensing Sub-Committee” which is sent to all parties before a Hearing.
2. There are certain rules that have to be followed. These are set out in the Licensing Act 2003 (Hearings) Regulations 2005 [SI 2005 No 44] (as amended). However, within those rules, the licensing authority has a lot of discretion as to how hearings will be conducted.

Overall Approach

3. Our overall approach is to conduct a hearing that is:-
 - Fair
 - Open, transparent and accountable
 - Treats everyone equally, whatever their status.

When will there be a hearing?

4. There are many different situations where a hearing will be held. There is a full list in Schedule 1 to the Hearing Regulations. In most case this will be where somebody has made relevant representations to an application for the grant or variation (other than a minor variation) of a premises licence or club premises certificate.

Who is a “party” to a hearing?

5. The Hearing Regulations refer to a “party” or “parties” to a hearing. These people have a special role in relation to a hearing. These are the people to whom we have to give notice of the hearing. They are listed in Schedule 2 to the Hearing Regulations. In the case of an application for a new licence or an application to vary a licence it will be:-
 - The Applicant
 - Persons who have made “relevant representations”.
6. We explain in Protocols C and G more details about who can make, what are, and how to make “relevant representations”.
7. We also explain in Protocol C about who we will tell about your representations and what you should do if you have concerns about disclosure of your personal details.

When will a hearing take place?

8. The Hearing Regulations set time limits within which hearings should start. They are set out in Schedule 1 to the Hearing Regulations. In the cases of an application for a new licence or an application to vary a licence, the hearing must be start within 20 working days beginning with the day after the end of the period for making representations. In some cases, the period is shorter.
9. If the hearing is to be held on more than one day, the days must usually be consecutive working days.
10. These are strict time limits and so it will not be possible to accommodate everyone's preferences. However, if there are dates or times that are inconvenient to you or dates or times that are particularly suitable for you please let us know why as soon as possible (and preferably when you submit your representations). We cannot promise you that we will be able to accommodate your wishes, but we will take them into account.
11. Hearings will usually take place on working days in the day time at the Civic Centre or other council premises. If you feel that different arrangements should be made, again please let us know why as soon as possible (and preferably when you submit your representations). We will consider what you say.

Who will be told about the hearing?

12. Once a hearing has been arranged, we have give a notice of hearing stating the date, time and place of the hearing to certain people. The people are listed in Schedule 2 to the Hearing Regulations.
13. In the case of an application for a new licence or an application to vary a licence it will be:-
 - The Applicant; and
 - Persons who have made "relevant representations".

When will people be told about the hearing?

14. In the case of an application for a new licence or an application to vary a licence, we must give the notice of the hearing no later than ten working days before the day of the first day on which the hearing is to be held.
15. In some cases, we are allowed a shorter period to give the notice of hearing.

What further information is given with the notice of hearing?

16. In addition to the date, time and place of the hearing, we must also give:-

- Details of a party's right of attendance, assistance and representation;
- Details of the party's rights at the hearing;
- Details of the consequences if a party does not attend or is not represented at the hearing;
- Details of the procedure to be followed at the hearing;
- Details of any particular points on which the Licensing Authority considers that it will want clarification at the hearing from a party;
- Copies of documents listed in Schedule 3 to the Hearings Regulations. In the case of an application for a new licence or an application to vary a licence, we have to give copies of the "relevant representations". These will include the details of your name, address and contact details, as explained in Protocol C. That protocol also explains what you should do if you have concerns about disclosure of your personal details.

What do you have to do if you have received a notice of hearing?

17. You should reply to us. In the case of an application for a new licence or an application to vary a licence, you should reply to us no later than 5 working days before the first day on which the hearing is to be held. The Hearing Regulations set a shorter period for certain hearings.

18. You should tell us:-

- Whether you intend to attend or be represented at the hearing;
- Whether you consider a hearing to be unnecessary;
- If, in addition to yourself and your representative, you wish someone else to appear at the hearing, you must ask for our permission. You must tell us that person's name and give us a brief description of the points or points on which that person may be able to assist us in relation your application or representations. This covers a witness, expert, or any other person that you wish to be heard at the hearing. We cannot unreasonably withhold permission.

Must there be a hearing?

19. We can only dispense with a hearing, in the case of an application for a new licence or an application to vary a licence, if:

- The Applicant AND each person who has made "relevant representations" agree that a hearing is unnecessary and have given us notice that they consider that a hearing is unnecessary; and

- We agree that a hearing is unnecessary.

20. We will then give notice to all parties that the hearing has been dispensed with.

Can representations be withdrawn?

21. Any party can withdraw their representations.

22. If you want to withdraw your representations, there are two ways to do this. You must:-

- Either, give us notice no later than 24 hours before the first day on which the hearing is to be held;
- Or, withdraw your representation orally at the hearing.

23. If there are no remaining representations, the hearing will be cancelled and the application will be granted by officers. If there are still representations remaining, and the remaining parties have not agreed that a hearing is unnecessary, then the hearing will proceed.

Negotiations

24. The time between making relevant representations and the hearing is the main period during which negotiations between the parties may take place to ascertain whether it might be possible to reach agreement as to the best way forward.

25. These are explained further in Protocol D and suggests target dates to complete negotiations.

Our discretions about time limits

26. The Hearing Regulations give us the power to extend time limits for a specified period where we consider it to be necessary in the public interest.

27. They also give us power to adjourn a hearing to a specified date or arrange for a hearing to be held on specified additional dates, where we consider this to be necessary for our consideration of any representations.

28. If you want us to exercise these discretions, ask us as soon as possible and give us your reasons.

29. If we exercise these discretions, we will give notice to the parties.

30. We cannot adjourn without fixing a further date (otherwise called adjournments *sine die*). There are some further restrictions on the exercise of these discretions but they do not apply in the case of an application for a new licence or an application to vary a licence.

Who will the hearing be before?

31. The hearing will usually be before a Licensing Sub-Committee. This consists of three councillors who are members of the Council's Licensing Committee. If possible it will be cross-party and include the chair or vice-chair of the Licensing Committee. The members are selected by the Council's Head of Democratic Services by rotation.
32. It is possible for an application to be considered by the full Licensing Committee or full Council. These situations are likely to be very rare. The full Council will only deal with the matter if Licensing Committee is unable to deal with a matter because of the number of members who have a conflict of interest.
33. At meetings of the Licensing Sub-Committee, there will also be a licensing officer, a legal officer and a democratic services officer. Their role is to assist the Sub-Committee but they are not members of the Sub-Committee and do not make the final decision. The final decision is the responsibility of the three councillors.

Is the hearing in public?

34. All hearings will be in public unless the sub-committee decides to exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public.
35. This means that generally anyone may attend and observe a hearing. Please let us know as soon as possible if you think that a large number of people are likely to attend. This is so that we can ensure that there is sufficient space available.
36. We are likely to exclude the public once everyone has had their say and make our decision in private. We will also exclude parties and their representatives at that time. The only people present will be the three councillors and the three officer-advisors.
37. We can also exclude the public during the hearing itself. This will be where a party wants to present confidential or sensitive information. We will only do this if we think it is in the public interest. If any party wants us to consider doing this, you should tell us as soon as possible.
38. We can also specifically require any person attending the hearing who in our opinion is behaving in a disruptive manner:-

- To leave the hearing;

and we can:

- Refuse to permit that person to return; or
- Permit that person to return only on such conditions as we may specify.

Such an excluded person may, before the end of the hearing, submit in writing any information which they would have been entitled to give orally had they not been required to leave.

Under this power we can exclude parties and representatives in addition to members of the public.

What can parties do?

39. Parties may attend the hearing.
40. Parties may be assisted or represented at the hearing by any person whether or not that person is legally qualified.
41. Parties may address the hearing.
42. Parties may question any other party, with our permission.
43. Parties may give further information in support of their application or representations, in response to a point of clarification that we have already identified in our notice of the hearing (see paragraph 16).
44. We may ask questions of any party or other person appearing at the hearing.
45. If you want us to take into account documentary or other information produced by you in support of the application or representation, you should send it to us before the hearing. If you only produce it at the hearing, we can only consider it if the other parties consent. You should make sure that the other parties are fully aware of your case well before the date of the hearing; otherwise, if they feel that they have not had sufficient notice, they are likely to apply for an adjournment.
46. However, we are required to disregard any information given by a party or by any other person to whom permission to appear has been given (e.g. a witness) which is not relevant to:-
 - Their application or representation or the application or representation of the party requesting their appearance, and
 - The promotion of the licensing objectives.

Parties should therefore ensure that information is relevant to these two matters.

What happens if parties do not attend?

47. If you have told us that you do not intend to attend or be represented, the hearing may proceed in your absence.
48. If you have not told us that you do not intend to attend or be represented and you do not attend, we may:-
 - Either, adjourn the hearing to a specified date, where we consider it to be necessary in the public interest;
 - Or, hold the hearing in your absence.
49. If we do hold the hearing in your absence, we will still consider at the hearing the application or representations made by you. If we adjourn the hearing, we will notify parties of the new hearing.
50. It would be very helpful if you tell us whether you intend to attend. If you face difficulties on the fixed date, tell us about your reasons so that we can take them into account.

How will a hearing proceed?

51. Except where the Hearing Regulations set out the procedure to be followed, we are allowed to determine the procedure to be followed.
52. At the beginning of the hearing, we have to explain the procedure that we will follow.
53. We will also consider requests by parties for other persons to be allowed to appear. (See paragraph 18). We cannot unreasonably withhold permission.
54. A hearing will take the form of a discussion led by us.
55. Although a party may ask questions of another party, with our permission, that questioning should not amount to cross-examination.
 - If a party wants to cross-examine a party, you should first ask our permission. We can only permit cross-examination if we consider that it is required to enable us to consider the representations or application.
 - If you feel that you are being cross-examined where permission has not been given, raise the matter with the chair at the hearing.
 - The chair of the hearing will intervene to stop cross-examination that has not been authorised.
56. We are required to allow all parties an equal maximum period of time to respond to points of clarification, question parties and address the hearing.

- We will not usually set these maximum periods at the beginning of the hearing;
- We also do not intend to specifically time how long parties spend exercising their rights.
- We will act when parties seem to be bringing in irrelevant matters or are becoming repetitious.
- We reserve the right to impose time limits, if we consider it necessary.
- If any parties feel that they have not been given sufficient time, raise the issue with the chair.

57. The following Table contains an outline of the procedure that will usually be followed:-

OUTLINE OF PROCEDURE TO BE FOLLOWED
<ul style="list-style-type: none">• The Chair will open the meeting and introduce members of the Committee and Officers to all present. The Chair will explain the nature of the decision to be taken and the procedure (as detailed below) to be followed, emphasising that the role of the sub committee is to determine the application in an impartial and even-handed manner, and in accordance with the relevant provisions of the Licensing Act 2003, National Guidance and the Licensing Authority's own policy.
<ul style="list-style-type: none">• The Licensing Officer will outline the application together with any relevant representations and their relevance to the Local Authority Licensing Policy Statement and Statutory Guidance.
<ul style="list-style-type: none">• Members may ask questions of the Officer.
<ul style="list-style-type: none">• The Applicant or the person representing him/her will be invited to address Committee. The Chair will at all times be mindful of the requirement to permit the parties equal time so far as is possible.
<ul style="list-style-type: none">• Members and then parties may ask questions of the Applicant
<ul style="list-style-type: none">• Responsible Authorities will be invited to address the committee.
<ul style="list-style-type: none">• Members and then parties may ask questions of the Responsible Authorities.
<ul style="list-style-type: none">• Interested Parties will be invited to address the committee. Where there are a number of parties making similar representations the Chair will expect the parties to nominate a spokesperson to make the representations.
<ul style="list-style-type: none">• Members and then parties may ask questions of the Interested Parties
<ul style="list-style-type: none">• The Chair will invite the Applicant and parties to summarise their points if they

wish.
<ul style="list-style-type: none">• The Chair will confirm that all parties are satisfied they have had adequate opportunity to present their case.
<ul style="list-style-type: none">• Members of the Committee will retire to discuss and make their decision, and will be accompanied by the legal advisor and the licensing officer (whose roles are to assist the Committee with advice; they are not part of the decision making process).
<ul style="list-style-type: none">• The Chair will relay the decision and the reasons for the decision and details of any conditions placed upon the Licence (if granted) under the licensing objective that they relate to.
<ul style="list-style-type: none">• Written notification of the decision together with information regarding the right of a party to appeal against the decision will be sent out.
<p><i>Where additional persons have been permitted to appear at the hearing under Regulation 8(2) of the Hearings Regulations such persons shall be invited to address the committee after the party who requested their attendance has addressed the committee, and answered any questions.</i></p>