

**ASSEMBLY**

**Wednesday, 5 April 2006**

**Agenda Item 7. Report of the Standards Committee - Code of Conduct for Members of the Licensing and Regulatory Board (Pages 1 - 6)**

Contact Officer: Barry Ray  
Telephone: 020 8227 2134  
Fax: 020 8227 2171  
Minicom: 020 8227 2685  
E-mail: [barry.ray@lbbd.gov.uk](mailto:barry.ray@lbbd.gov.uk)

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## THE ASSEMBLY

5 APRIL 2006

## REPORT OF THE STANDARDS COMMITTEE

*This report is submitted under agenda item 7. The Chair will be asked to determine whether this report can be considered at the meeting under the provisions of Section 100B(4)(b) of the Local Government Act 1972 in order to avoid any delay.*

<b>Title: Code of Conduct for Members of the Licensing and Regulatory Board</b>	<b>For Decision</b>
<p><b>Summary:</b></p> <p>At its meeting of 9 March 2006, the Standards Committee received a report proposing a Code of Conduct for Members of the Licensing and Regulatory Board (appendix A), subsequent to its approval by the Licensing and Regulatory Board. Its purpose is to provide clarity about participation in the functions of the Licensing and Regulatory Board and to help Members work within the Council's Code of Conduct for Members and avoid any potential conflicts of interest that might arise.</p> <p><b>Wards Affected:</b> None.</p>	
<p><b>Implications:</b></p> <p><b>Financial:</b> None</p> <p><b>Legal:</b></p> <p>The procedures and processes by which the Licensing and Regulatory Board operates are strictly controlled by regulations enacted through the Licensing Act 2003.</p> <p><b>Risk Management:</b> None</p> <p><b>Social Inclusion and Diversity:</b> None.</p> <p><b>Crime and Disorder:</b> None.</p>	
<p><b>Recommendation</b></p> <p>The Assembly is asked to adopt the proposed Code of Conduct for Members for Licensing and Regulatory Matters for inclusion in Part E of the Council Constitution.</p>	
<p><b>Reason</b></p> <p>The key objectives of the Code are to ensure that the Members have guidance in dealing with Licensing &amp; Regulatory matters and in so doing protect the Council and individual Members from allegations of unfairness, findings of maladministration and legal challenge.</p>	

<b>Contact Officer:</b> Councillor R Curtis	<b>Title:</b> Chair of the Standards Committee	<b>Contact Details:</b> Tel: 020 8590 9005 E-mail: <a href="mailto:rcurtis@barking.dagenham.gov.uk">rcurtis@barking.dagenham.gov.uk</a>
John Barry	Democratic and Electoral Services	Tel: 020 8227 2352 Fax: 020 8227 2171 Minicom: 020 8227 2685 E-mail: <a href="mailto:john.barry@lbbd.gov.uk">john.barry@lbbd.gov.uk</a>

**Consultees**

None

**Background papers used in the preparation of the report:**

- Standards Committee meeting minutes, 9 March 2006

**LONDON BOROUGH OF BARKING & DAGENHAM**

**CODE OF CONDUCT FOR MEMBERS  
FOR LICENSING AND REGULATORY MATTERS**

**1. Introduction**

The Licensing Act 2003 (the "Act") transferred responsibility for the licensing of the supply and sale of alcohol, and rationalised this with the control of regulated entertainment and late night refreshment. The Council is required to determine applications for licensed premises and personal licences under the Act. There is a set period for consultation. During that period persons who are interested parties i.e. a person, or a body who represents people who live in the vicinity, or a business or body representing a business in that vicinity and the responsible authorities (e.g. Police, Fire, Planning, Local Authority). can make relevant representations. These representations must relate to statutory Licensing Objectives as set out in the Act.

**The Licensing Objectives**

The Act requires that the Licensing Functions are carried out with a view to promote the statutory Licensing Objectives of:

- (a) the prevention of Crime and disorder
- (b) public safety;
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm

If relevant representations are made and not resolved or withdrawn then the Act requires the application must be determined by a statutory Licensing Committee established under the Act. For Barking & Dagenham the Licensing Committee functions are performed by the Licensing and Regulatory Board (the "Board").

**2. The Hearing**

The determination of licensing applications must be held in a quasi judicial manner. This means the Board must ensure that the application is determined in a fair and impartial manner and in accordance with natural justice. The Hearing is subject to statutory regulation.

- 3.** If an applicant or person who made relevant representations is dissatisfied with the decision of the Board then they can appeal to the Magistrates' Court within 21 days of receiving written notice of the decision. The appeal will take the form of a re-hearing.
- 4.** Members must be mindful of the requirements of the Members Code of Conduct as alleged breaches could lead to judicial review applications to the High Court or complaints to the Standards Board for England. The Board's hearing of applications need to be compliant with the Code of Conduct as any breach is likely to lead to a challenge of the decision(s), either on substantive and/or on procedural grounds. Members can ensure that challenges are avoided by following a fair and impartial

procedure. This means all parties entitled to address the hearing must be given a full and fair opportunity to present their case before a Committee of Members who have an open mind about the application.

5. To avoid risk of challenge Members should have regard to the following:-

**(i) Ward Councillors**

The Council has decided that Members of the Board are not able to take part in decisions that determine applications in their own Ward. They must leave the room.

**(ii) Personal and Prejudicial Interests**

If a Member of the Board has a personal interest then he/she must declare the interest; if the personal interest is a prejudicial interest, the Member should not participate in the determination of the application and leave the room.

To be quorate, the Board has to consist of at least three Members, it is strongly recommended that as soon as Members receive their papers they check each application to make sure that they do not have a prejudicial interest. If they consider themselves to have a prejudicial interest they should notify the Democratic Services Officer responsible for the Licensing & Regulatory Board as soon as possible in advance of the meeting. If it later becomes apparent to the Member that he/she has a prejudicial interest (which may not be until the meeting) this should be declared as soon as it becomes apparent.

**“Personal Interest”** - a Member will be regarded as having a personal interest if it is an interest which the Member has given notice of in the Statutory Register of Members Interests or if it affects the well-being or financial position of the Member, their employer or business, a relative or a friend.

The Code of Conduct specifies that if a Member has a personal interest they can still take part in a meeting and vote unless the personal interest is also a prejudicial interest. This means if a Member has a personal interest they must always disclose that interest to the Board at the beginning of the meeting but they may still be able to take part in the determination of the case. In practice, more often than not, a personal interest will be perceived by the public as a prejudicial interest.

**“Prejudicial Interest”** - A prejudicial interest bars Members of the Board from taking any part in the hearing. This includes appearing as a witness or party. A prejudicial interest is defined as one that a member of the public with the knowledge of the relevant facts would reasonably regard to be so significant that it is likely to prejudice the Member’s judgement of the of the public interest.

In such circumstances a Member must leave the room, so that there can be no doubt that the Member did not influence the Board who made the decision. In case of doubt, the best advice is to withdraw from dealing with the application.

In addition to the general provisions in the Council's Constitution, a Member of the Board will be regarded as having a prejudicial interest in a licensing application if:

- (i) They live near the premises in question
- (ii) They are a regular visitor to the premises, or
- (iii) They belong to a lobby group which may be affected by the outcome of the application.

**(iii) Pre-determined Views**

The Council has to ensure that justice is done and seen to be done which means any Member or prospective Member of the Board must be very careful about what they say in public about the Council's licensing policies or the way in which applications will be determined. If a Member makes any comment in public which would indicate that they would have a preference to a particular application then this will disbar the Member from determining the licensing application.

**(iv) Other Members right to address the Board**

The Act allows "interested parties" to make relevant representations. There are four categories of interested party:

- (a) a person living in the vicinity
- (b) a body representing persons living in the vicinity,
- (c) a person involved in a business in the vicinity or
- (d) a body representing those persons.

A Member of the Council or a local MP may act as a representative and make relevant representations on behalf of any of these individuals or groups if they are specifically asked to do so. However in the case of a Member of the Board although they can make written relevant representations within the time limits prescribed by the Act, they are required to leave the room for the hearing of the application. It therefore follows for that application they will not be able to address the Board, either as an interested party or as a representative of an interested party.

Constituents' concerns may be orally presented to the Board by a Ward Member who is not a Member of the Board and they:

- have been specifically asked to represent, an interested party as set out above; or
- have either made a relevant representation within the requisite time or represents an interested party who has made a relevant representation within the requisite time.

And in the case of a Ward Member

- are not prevented from so doing by reason of a prejudicial interest.

It should be noted that any Member of the Council wishing to make relevant representations in a personal capacity would have a prejudicial interest and should therefore not take part in the proceedings and leave the room.

These are the **only** criteria that can be taken into account, and **override** any provisions in the Constitution enabling a Member to address a Council as of right.

If you have any queries on the operation of this Code of Conduct please contact Muhammad Saleem Monitoring Officer 020 8227 3105 or Robin Hanton Deputy Monitoring Officer 020 8227 3201.