

## APPENDIX 6 – D5 PROPOSED VERSION

### **Part D – Licensing Sub-Committee Hearing Procedure**

#### **Licensing Sub-Committee and Regulatory Sub-Committee Hearings**

Whilst written for the Licensing Sub-Committee, these Procedure Rules can be easily adapted for any Regulatory Sub-Committee hearing.

#### **ADMINISTRATION IN RELATION TO A HEARING**

1. Prior written notice of the Hearing will have been given to the interested/relevant Parties.
  - (a) Where a Party has informed the Authority that they will not be attending or represented, the Hearing may proceed in their absence.
  - (b) Where a Party has not replied to the notice, does not attend and is not represented, the Sub-Committee may proceed with the Hearing in that Party's absence or adjourn the Hearing if it is considered necessary in the public interest to do so.
  - (c) If a Party has indicated they will attend but does not appear, that Party must inform the Authority of any delay, with reasons and in consideration the Sub-Committee may decide to proceed with the Hearing or adjourn to later that same day or another time. If a Party is more than 15 minutes late and has not contacted the Authority with details of any delay, the Sub-Committee can decide to proceed with the Hearing or adjourn to later that same day or to another time.
2. If the Hearing is held in a Party's absence, the Sub-Committee will consider the application, representation or notice made by that Party.
3. Under the Licensing Act 2003 (Hearings) Regulations 2005 (Hearing Regulations) an Authority may dispense with a hearing if all persons required by the Act to agree that such a hearing is unnecessary, other than the Authority itself, have done

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so by giving notice to the Authority that they consider a hearing to be unnecessary.

Where all the persons required by the Licensing Act 2003 to agree that a hearing is unnecessary have done so in accordance with the Hearing Regulations, the Authority, if it agrees that the hearing is unnecessary, must give notice to the Parties that the hearing has been dispensed with.

4. If it is the case that the Authority does not agree that the hearing should be dispensed with, the application/notice will still be determined by the Sub-Committee in public, unless it is considered to be in the public interest that the determination should be in private, on the basis of advance papers provided, with the Licensing Officer introducing their report and answering any queries the Sub-Committee may have before it makes its' determination.
5. Representations can be withdrawn by prior notice up to 1 day before the Hearing or orally at the Hearing.
6. Hearings shall take place in public, except where, the Authority considers that the public interest in excluding the public from all or part of the Hearing outweighs the public interest in it remaining public. The Authority considers it to be in the public interest to exclude the press and public, including the Parties, when the Sub-Committee is deliberating in order to reach its' decision. Where facilities permit, public hearings will be available to be viewed and participated in online using the Authority's webcast service. Members of the public who wish to record, photograph, film and report on public hearings are asked to advise the Democratic Services Officers before the Hearing so that where possible all necessary practical arrangements can be made.
7. At the Hearing any Party can be assisted or represented by any person whether or not that person is legally qualified.
8. The Hearing will be before a Sub-Committee which will be made up of three Members of the Authority's Licensing and Regulatory Committee who will at the beginning of the Hearing agree and identify which of them is to act as the Chair for the Hearing. This will be the first item on the agenda. Each matter/application will be dealt with individually and the

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three Members must be able to participate in relation to each application to be considered at the Hearing and remain until the application/notice is determined.

9. The Chair will address any issues relating to registerable interests under the Authority's Member Code of Conduct at the Hearing after the introductions of persons in attendance have been made.
10. Members of the Sub-Committee must consider beforehand if they need to declare any registerable interest in which case they will not be allowed to attend the Hearing. Members who have a Disclosable Pecuniary Interest will not be able to attend the Hearing either. Members should also consider beforehand if they have or would be considered to have predetermined the matter in which case, they should also distance themselves from determination of the matter and not attend the Hearing.
11. Members of the Sub-Committee will have received advance notice of the Hearing (in accordance with the relevant legislation) in relation to each application/notice to be considered, which will include the Licensing Officer's Report and associated papers and Members will be expected to have read those papers ahead of the Hearing.
12. Account can be taken of documentary or other information produced by a Party in support of their application, representation or notice either 1 working day before the Hearing or, with the consent of all other Parties including the Sub-Committee at the Hearing. In both cases the Party seeking to introduce the information should provide sufficient copies of the same for all relevant Parties including the Sub-Committee Members.
13. Any Party wishing to call another person (other than the person representing them) to make oral representations, must provide details of this to the Authority within the time stated in the Notice of Hearing which the Authority will serve on the Parties. At the beginning of the Hearing the Sub-Committee will consider any such requests and confirm whether permission is granted for that person to speak.
14. The Sub-Committee may disregard any information which is not considered relevant to the application/representation/notice.
15. The purpose of the Hearing is to enable those with a right to appear, to amplify their written application or representation. It is also to assist the Sub-Committee

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to gather evidence and understand the relevant issues. The Parties (including other persons on their behalf) will be allowed an equal reasonable period of time to address the Hearing and ask questions. The Chair may set such maximum period of time in the interests of the progress of the Hearing and in the public interest. Where representations made relate to the same or similar issues, a spokesperson should be appointed where possible to speak on behalf of any person who has made a written representation.

16. The Parties can ask questions of each other in accordance with the procedure below. The Chair can stop a Party asking questions if they feel the questions are unnecessary. Parties are expected to treat other Parties with respect and any form of harassment or excessive questioning will not be tolerated. In such cases the Chair will ask the Party to discontinue that type of questioning. The Chair can require any person (including any of the Parties) who is disrupting the proceedings to leave the Hearing.
17. The decision of the Sub-Committee will be made after the close of the Hearing for that matter and confirmed in writing to the Applicant and all Parties who submitted relevant representations, together with details of the right to appeal, within the time limits set out in the legislation and regulations.
18. The date of formal notification for the purpose of any appeal against the Sub-Committee's decision will be the date of the letter or electronic communication from the Authority enclosing the Decision Notice.
19. The Sub-Committee may depart from this procedure (as varied/amended from time to time based on changes to law and practice) if it considers it necessary and/or equitable to do so.

### **AT THE HEARING**

20. The Chair will open the Hearing and introduce the Sub-Committee and Officers. They will then ask each Party to introduce themselves.
21. The Chair will confirm that if a Party is not present their representation/application will be read and taken in to account in reaching the decision.

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22. The Chair will address any registerable interest arising under the Code of Conduct.
23. The Chair will consider any submitted requests from a Party for permission for another person to appear at the Hearing. If necessary, the Sub-Committee will retire to deliberate before making a decision.
24. The Chair will confirm that the Hearing will take the form of a round-the-table discussion led by the Sub-Committee in accordance with this procedure. If all Parties present confirm that they have seen and understood the procedure to be followed at the Hearing and agree that they are ready to proceed then the Hearing shall commence.
25. The Chair will remind everyone that the purpose of the Hearing should be borne in mind at all times i.e.

*To enable those with a right to appear, to amplify their written application or representation. It is also to assist the Sub-Committee to gather evidence and understand the relevant issues.*

26. The Chair will confirm what advance papers have been received and that these have been read.
27. The Chair will make clear that all Parties should only address the Sub-Committee in relation to matters they have raised in their application/representation. Any Party wishing to submit late evidence at the Hearing will only be able to do so with the consent of all Parties present and with the consent of the Sub-Committee.
28. The Chair will confirm whether all Parties have seen and understood the procedure to be followed and are ready to proceed with the Hearing.
29. The Chair will ask the Applicant whether they wish to make any amendments to their application with a view to addressing any issues raised by representations.
30. Order of Oral Presentation
  - (a) The Licensing Officer will present their report outlining the details of the application/notice/representations received.

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- (b) Any Party may question the Licensing Officer.
- (c) The Members may question the Licensing Officer.
- (d) The Applicant/Licence Holder will present their case and call any witnesses.
- (e) Any Party may question the Applicant/Licence Holder and any witnesses.
- (f) Members may question the Applicant/Licence Holder and any witnesses.
- (g) Responsible Authorities will present their case and call any witnesses.
- (h) Any Party may question the Responsible Authorities and any witnesses.
- (i) Members may question the Responsible Authorities and any witnesses.
- (j) Other Person(s) will present their case in turn and call any witnesses.
- (k) Any Party may question the Other Person(s).
- (l) Members may question the Other Person(s).

The Chair at their discretion, may change the order of oral presentation at any stage, if it is considered to be beneficial to the flow of the hearing.

- 31. Before moving on to the next Party, the Chair will check there are no further points the current Party wishes to make or any further questions that need to be put to that Party.
- 32. The Licensing Officer may present any further information such as proposed non-mandatory Conditions deriving from the Operating Schedule or suggested by any Party. However, it will remain for the Sub-Committee to determine what conditions will apply, if any, should the application be successful.
- 33. Each Party will be invited to make closing submissions in the following order –
  - a. Responsible Authorities
  - b. Other Persons

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- c. The Applicant
- d. Licensing Officer

The Chair at their discretion, may change the order of the closing submissions at any stage, if it is considered to be beneficial to the flow of the hearing.

- 34. The Chair will then close the Hearing and the Sub-Committee will retire to determine the matter. The Legal Advisor will retire with the Sub-Committee to answer any points of law.
- 35. The Sub-Committee will come to a decision which will be sent to the Applicant and all other relevant Parties together with the details of the right to appeal.

**NOTE:**

In producing this procedure the following has been considered: -

*The relevant legislation and statutory guidance together with local policies and procedures.*