

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Licensing Committee (2003 Act) 21 May 2009
AUTHOR/S: Interim Executive Director for Corporate Services / Democratic Services Manager

ESTABLISHMENT OF LICENSING (2003 ACT) SUB-COMMITTEE, APPOINTMENT OF SUB-COMMITTEE CHAIRMEN AND PROCEDURE FOR THE APPOINTMENT OF MEMBERS

Purpose

1. The Committee is invited to agree the establishment of a single Sub-Committee to determine applications under the Licensing Act 2003, appoint a pool of six of its Members to Chair Sub-Committee Hearings and agree a process for the appointment of Members to the Sub-Committee when it is required to meet.

Background

2. The Committee has traditionally appointed annually a pool of Members who have expressed a willingness to chair 2003 Act Sub-Committee meetings and undertaken the appropriate training; it is recommended to do so again for the 2009-2010 Civic Year.
3. With regard to membership of Sub-Committees, until now officers have calculated every possible permutation of Chairmen and Members making up the three required under the 2003 Act. In effect, the Committee has created a Sub-Committee for every possible combination, making a total of over 200 Sub-Committees.

Considerations – Establishment of a single Licensing (2003 Act) Sub-Committee

4. The process outlined in paragraph 3 above had the advantage of enabling the Council to point to a fixed membership of each Sub-Committee, each of which had been formally appointed by the parent committee. When the 2003 Act came into effect, this procedure was considered necessary to minimise the risk of subsequent Sub-Committee determinations being challenged on the grounds that sub-committees had not been properly constituted.
5. The calculation of every possible permutation of Chairmen and Members was considered a necessary safeguard; however, the calculation process is time-consuming and inefficient. In light of experience of the Act after five years in operation, the risk of challenge on the above grounds is considered minimal. In practice, Magistrates hearing appeals against sub-committees' determinations consider the material evidence afresh. In the event of a Judicial Review, it is likely that a court would attach greater weight to the reasonableness of the sub-committee's decision and the training of its members than to the process for its appointment.
6. For these reasons it is no longer considered necessary to establish Sub-Committees for every permutation of Chairmen and Members. The Licensing Act 2003 requires sub-committees to be established by the main committee but makes no provision for the means by which Members are to be appointed to sub-committees. It is therefore

proposed that the Committee establish a single Licensing (2003 Act) Sub-Committee comprising three Members of the Committee, a Chairman and two Members. It is proposed that the committee authorise the Democratic Services Manager to select Members to sit on each panel, based on individual Member availability, having regard to potential conflicts of interest and in consultation with the Chairman of the Licensing Committee (2003 Act).

Options

7. The Committee may wish to continue with its current arrangement for the establishment of Sub-Committees based on every permutation of Chairmen and Members; however, this is not recommended, for the reasons set out above.

Implications

8.	Financial	None specific
	Legal	As set out in the main body of the report.
	Staffing	The proposed procedure will result in a saving in officer time arising from the requirement to calculate over 200 different permutations of Members being removed.
	Risk Management	As set out in the main body of the report.
	Equal Opportunities	None specific

Consultations

9. The Licensing Officer and Senior Lawyer have been involved closely in the preparation of this report and recommendations. Having consulted via networking forums, we are not aware of any other licensing authority which uses the permutation system to constitute its 2003 Act sub-committees.

Effect on Strategic Aims

10.	Commitment to being a listening council, providing first class services accessible to all.
	The introduction of a revised process for the appointment of Members to Sub-Committees to make determinations under the Licensing Act 2003 will save on officer time by removing the requirement for all permutations to be calculated, thus enabling the Council's licensing function under the Act to be carried out in a more efficient and effective manner.
	Commitment to ensuring that South Cambridgeshire continues to be a safe and healthy place for all.
	No direct implications.
	Commitment to making South Cambridgeshire a place in which residents can feel proud to live.
	No direct implications.
	Commitment to assisting provision for local jobs for all.
	No direct implications.
	Commitment to providing a voice for rural life.
	No direct implications.

Conclusions/Summary

11. The Council's existing arrangements for the appointment of 2003 Act Sub-Committees have been fit for purpose; however, they have also been inefficient and time-consuming and require review in light of five years' experience of the Act. It is considered that the proposal to create a single Licensing (2003 Act) Sub-Committee will reduce the supporting administrative burden whilst continuing to ensure a watertight process for the appointment of Members which minimises the risk of a determination subsequently being successfully challenged.

Recommendations

12. The Committee is recommended:
- (a) To establish a Licensing Sub-Committee to make determinations under the Licensing Act 2003 in respect of applications not determined by the Licensing Officer under delegated powers and in accordance with the Table of Delegations in respect of Licensing Functions set out in the Annex to Table One of Part 3 of the Constitution.
 - (b) To appoint 6 Members to act as Chairmen of the Sub-Committee, subject to the Chairmen having received, or giving a commitment to undertake, the appropriate training required for the role as directed by the Corporate Manager for Health and Environmental Services,
 - (c) To authorise the Democratic Services Manager to appoint three Members to the Sub-Committee when it is required to meet, comprising a Chairman from the list agreed in (b) above and two Members of the Committee, dependent on availability, having regard to potential conflicts of interest and in consultation with the Chairman of the Committee.

Background Papers: the following background papers were used in the preparation of this report:

None

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