

# **RBBC Licensing Sub-Committee - Hearings Rules**

## **Licensing Act 2003 and Licensing Act 2003 (Hearings) Regulations 2005**

### **1. General**

- 1.1 Items will be referred to the Sub-Committee in accordance with the Council's Constitution and the Officer Scheme of Delegation (as reproduced in part in the Council's Statement of Licensing Policy).
- 1.2 Council applications for premises licences will be decided by the Licensing Committee, even when no representations are made.

### **2. Composition of Sub-Committee**

- 2.1 The Sub-Committee shall comprise of three members appointed from the Licensing Committee.<sup>1</sup> One member shall be an appointed Sub-Committee Chairman. The quorum shall be three.
- 2.2 No member of the Sub-Committee shall sit on an application in his/her own ward.

### **3. Right of attendance, assistance and representation**

- 3.1 An interested party who has made an objection/representation may attend the hearing and may be assisted or represented by any person whether or not that person is legally qualified.<sup>2</sup>
- 3.2 An interested party is:<sup>3</sup>
  - (a) a person living in the vicinity of the premises;
  - (b) a body representing persons who live in that vicinity, for example a residents' association;

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<sup>1</sup> Act s9.

<sup>2</sup> Act 2003 s13 and Regulations paras 2 and 15.

<sup>3</sup> Act s13(3).

- (c) a person involved in a business, charity, religious establishment or any other enterprise located in that vicinity;
- (d) a body representing persons involved in such business, charity, religious establishment or any other enterprise located in that vicinity, for example a trade association.

3.3 Interested parties may be assisted or represented by their ward councillor/s.

3.4 Interested parties may notify the Licensing Authority that at the hearing, they will request permission from the Sub-Committee for any other person/s to appear at the hearing and speak on their behalf (in addition to the person representing them).<sup>4</sup>

3.5 Parties who do not notify the Licensing Authority as in paragraph 3.4 will not be permitted to make the application referred to.

#### **4. Failure of parties to attend the hearing**

4.1 If a party has informed the Licensing Authority that s/he does not intend to attend or be represented at the hearing, the hearing may proceed in his/her absence.

4.2 If a party who has not so indicated fails to attend or be represented at the hearing the Sub-Committee may:

- (a) where it considers it to be necessary in the public interest, adjourn the hearing to a specified date;
- (b) decide in the first instance to adjourn the hearing, but on the second or subsequent occasion hear the matter in the party's absence;
- (c) hold the hearing in the party's absence.

4.3 Where the Sub-Committee holds the hearing in the absence of a party, the Sub-Committee may consider the application, representations or notice made by that party.<sup>5</sup>

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<sup>4</sup> Regulations para 8(2).

<sup>5</sup> Regulations para 20(3).

## **5. Hearing to be in public**

- 5.1 All hearings shall take place in public, except where the public interest requires the public's exclusion from the hearing or part of the hearing.<sup>6</sup>
- 5.2 A party and any person assisting or representing a party may be treated as a member of the public.<sup>7</sup>

## **6. Exclusion of the public**

- 6.1 The Sub-Committee may require any person attending the hearing who is in its opinion behaving in a disruptive manner to leave the hearing and may:
- (a) refuse to permit that person to return; or
  - (b) permit him/her to return only on such conditions as the Sub-Committee may specify.
- 6.2 An excluded person may, before the end of the hearing, submit to the Sub-Committee in writing any information that s/he would have been entitled to give orally had s/he not been required to leave.<sup>8</sup>

## **7. Procedure at hearing**

- 7.1 At the beginning of the hearing, the Chairman shall explain to the parties the procedure which the Sub-Committee intends to follow.<sup>9</sup>
- 7.2 At the beginning of the hearing, the Sub-Committee shall consider any request made for permission for another person to appear at the hearing, only provided that notice has been made under paragraph 3.4 above.<sup>10</sup>
- 7.3 <sup>11</sup>A party shall be entitled to:

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<sup>6</sup> Regulations para 14.

<sup>7</sup> Regulation 14(3).

<sup>8</sup> Regulations para 25.

<sup>9</sup> Regulations para 22.

<sup>10</sup> Regulations para 22.

<sup>11</sup> Regulations para 16.

- (a) in response to a point upon which the Licensing Authority has given notice that it will want clarification, give further information in support of its application, representations or notice;
- (b) if given permission by the Sub-Committee, question any other party; and
- (c) address the Sub-Committee.

7.4 Members of the Sub-Committee may ask any question of any party or other person appearing at the hearing.<sup>12</sup>

7.5 Where there is more than one representation raising the same or similar grounds, the Sub-Committee may request that only one party address it on behalf of the parties who have made the representations in question.

7.6 In considering any representations or notice made by a party, the Sub-Committee may take into account documentary or other information produced by a party in support of its application, representations or notice either before the hearing or, with the consent of all the other parties, at the hearing.<sup>13</sup>

7.7 <sup>14</sup>The Sub-Committee shall disregard any information given by a party, or any person to whom permission to appear at the hearing is given by the Sub-Committee, which is not relevant to:

- (a) their application, representations or notice (as applicable) or, in the case of another person, the application, representations or notice of the party requesting their appearance, and
- (b) the promotion of the licensing objectives or, in relation to a hearing to consider a notice given by a chief officer of police, the crime prevention objective.

7.8 Hearsay evidence may be admitted before the Sub-Committee.

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<sup>12</sup> Regulations para 17.

<sup>13</sup> Regulations para 18.

<sup>14</sup> Regulations para 19.

- 7.9 The weight, if any, to be attached to hearsay evidence shall depend upon its nature and source.
- 7.10 Where a party intends to make reference to a particular Code of Practice or any other relevant document as part of its submission, it will declare this to the Sub-Committee at the start of the hearing's commencement.
- 7.11 Cross-examination shall not be permitted unless the Sub-Committee considers that cross-examination is required for it to consider the representations, application or notice as the case may require.<sup>15</sup>
- 7.12 Parties shall be entitled to make closing submissions. The closing submissions of the responsible authorities, the interested parties and the applicant shall proceed in that order.
- 7.13 The Sub-Committee may place a time limit of five minutes on the exercise of the rights set out in paragraphs 7.3, 7.10 and 7.11 above. The Sub-Committee must allow the parties an equal maximum period of time.<sup>16</sup>

## **8. Determination of applications**

- 8.1 The Sub-Committee may take such of the following steps as it considers necessary for the promotion of the licensing objectives:<sup>17</sup>
- (a) grant licence in accordance with the application subject to conditions specified in the operating schedule, statutory mandatory conditions, or club operating schedules;<sup>18</sup>
  - (b) exclude from the scope of the licence any of the activities to which the application relates;<sup>19</sup>

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<sup>15</sup> Regulations para 23.

<sup>16</sup> Regulations para 24.

<sup>17</sup> The licensing objectives are: (a) the prevention of crime and disorder; (b) public safety; (c) the prevention of public nuisance; and (d) the protection of children from harm (Act s4(2)).

<sup>18</sup> Act sections 18(2), 72(2)(a), 85(2), 120, 121.

<sup>19</sup> Act sections 18(4)(b), 52(4)(b), 72(2)(b), 88(4)(b).

- (c) modify the conditions of the licence;<sup>20</sup>
- (d) reject the whole or part of the application;<sup>21</sup>
- (e) refuse to accept or remove the proposed designated premises supervisor;<sup>22</sup>
- (f) suspend the licence for a period not exceeding three months;<sup>23</sup>
- (g) revoke the licence.<sup>24</sup>

8.2 The Sub-Committee shall make its determination either at the conclusion of the hearing or otherwise as prescribed by the Regulations.<sup>25</sup>

8.3 The Sub-Committee shall make its determination at the conclusion of the hearing for cases listed below:

- (a) Counternotice following police objection to a temporary event notice;
- (b) Review of premises licence following closure order;
- (c) Determination of application for conversion of existing licence or conversion of existing club certificate;
- (d) Determination of application by holder of a justices' licence for grant of a personal licence.

8.4 In any other case the Sub-Committee must make its determination within the period of five working days, beginning with the day or last day on which the hearing was held.<sup>26</sup>

8.5 All reasons for decisions must be clearly documented. They should:

- (a) summarise the key aspects of the evidence given by each side on the issue;

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<sup>20</sup> Act sections 18(4)(a), 35(3)(a), 52(4)(a), 72(4)(a), 85(4)(a), 88(4)(a).

<sup>21</sup> Act sections 18(4)(d), 35(3)(b), 44(3), 44(5)(b), 72(2)(c), 85(4)(b), 120, 121.

<sup>22</sup> Act sections 18(4)(c), 39(3)(b), 52(4)(c).

<sup>23</sup> Act sections 52(4)(d), 88(4)(c).

<sup>24</sup> Act sections 52(4)(e), 88(4)(d).

<sup>25</sup> Regulations para 26.

<sup>26</sup> Regulations para 26(2).

- (b) state the weight placed on the evidence and why;
- (c) state why refusal of the licence or attachment of the condition is necessary in order to promote a particular licensing objective;
- (d) state that the Licensing Authority has had regard to national guidance and local policy; and
- (e) state that the Licensing Authority has nevertheless had regard to the individual merits of the case, human rights, and the rules of natural justice before reaching this decision.

8.6 Where the Licensing Act 2003 does not make provision for the period within which the Sub-Committee must notify a party of its determination, the Sub-Committee must do so forthwith on making its determination.<sup>27</sup>

## **9. Record of proceedings**

9.1 A permanent and intelligible record of the hearing shall be kept for six years from the date of determination or, where an appeal is brought against the determination, the disposal of any appeal.<sup>28</sup>

9.2 Clerical mistakes in any document recording a determination of the Licensing Authority or errors arising in such documents from an accidental slip or omission may be corrected by the Licensing Authority.<sup>29</sup>

## **10. Adjournments<sup>30</sup>**

10.1 Subject to the provisions of the Regulations, where it considers it necessary for its consideration of any representations or notice made by a party, the Sub-Committee may:

- (a) adjourn the hearing to a specified date; or

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<sup>27</sup> Regulations para 28.

<sup>28</sup> Regulations para 30.

<sup>29</sup> Regulations para 33.

<sup>30</sup> Regulations para 12.

(b) arrange for a hearing to be held on specified additional dates.



10.2 Where the Sub-Committee adjourns the hearing to a specified date it shall forthwith notify the parties of the date, time and place to which the hearing has been adjourned.<sup>31</sup>

## **11. Waiver of rules**

11.1 Except where prescribed by the Regulations, the Sub-Committee may in any particular case dispense with or modify these rules.<sup>32</sup>

11.2 Any irregularity resulting from any failure to comply with the Regulations shall not of itself render the proceedings void. If the Sub-Committee considers that any person may have been prejudiced as a result of the irregularity, it shall take such steps as it thinks fit to cure the irregularity before reaching its determination.<sup>33</sup>

11.3 In particular, the Sub-Committee may extend a time limit provided for in the Regulations for a specified period where it considers this to be necessary in the public interest.

11.4 Where the Sub-Committee has extended a time limit it must forthwith give a notice to the parties stating the period of time of the extension and the reasons for it.

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<sup>31</sup> Regulations para 20(4).

<sup>32</sup> Regulations para 21.

<sup>33</sup> Regulations paras 31 and 32.

## **RBBC Licensing Sub-Committee - Licensing Procedure**

(The order of business shall be at the discretion of the Sub-Committee, but will normally proceed in accordance with and in the order of the paragraphs below.)

1. The **Chairman** will introduce him/herself, the other members of the Sub-Committee, and such officers as are present, indicating their role in the proceedings and the procedure to be followed.
2. The **Chairman** will ask the interested parties present to identify themselves, to indicate if they wish to address the Sub-Committee, and ask whether agreement has been reached on any of the issues which are in dispute.
3. The **Sub-Committee** will consider any request made by a party for permission for another person to appear at the hearing (to represent them, to give evidence, or both).
4. The Chairman will ask the **Licensing Officer** to introduce the report, give a brief outline of the application received and issues requiring consideration by the Sub-Committee.
5. The parties will normally be invited to **address the Sub-Committee** in the following order:
  - (a) **Applicant (or representative)**;
  - (b) **Responsible Authorities**;
  - (c) **Other interested parties** who have previously submitted a report to the Council and wish to address the Sub-Committee.
6. **Questions** can be put to the Licensing Officer, applicant, Responsible Authorities and the other interested parties by and in the following order:
  - (a) The **Licensing Officer** regarding particular points upon which the Council has previously given notice it will seek clarification;

- (b) The **Sub-Committee** regarding particular points upon which it has previously given notice that it will seek clarification;
  - (c) The **Sub-Committee** on any other topic;
  - (d) The **other parties** at the hearing in the order nominated by the Chairman.
7. The Responsible Authorities, the interested parties and the applicant will make **closing submissions** in that order.
  8. After hearing the representations of the parties, the **Sub-Committee** may ask all other persons to withdraw from the room, or may withdraw itself, in order to allow it to make its deliberations.
  9. The Sub-Committee may ask the **Council's Legal Adviser** during deliberations to provide advice. The Legal Adviser may inform the parties of advice given.
  10. If it is necessary to recall any party to **clarify points in issue**, all parties will be invited to return.
  11. The Sub-Committee shall **make its determination** at the conclusion of the hearing (if required by legislation) or else within five working days.
  12. The **Chairman** will inform those present of the Sub-Committee's decision forthwith (if made), giving its reasons, and confirm that a written notification of the decision and the reasons for it will be provided within the relevant timescale.

**COMMITTEE FORMALLY CLOSED**