

# Crawley Borough Council

## Report to Governance Committee

5 March 2024

### Review of the Constitution

Report of the Head of Governance, People & Performance – LDS/215

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#### 1. Purpose

- 1.1. This report requests that the following matters be reviewed / considered by the Committee and decide whether to propose to the Full Council that changes be made to the Council's Constitution:
- Guillotine procedures.
  - Licensing Sub-Committee (Hearings) Procedure Rules.
  - Order of Business for the Annual Meeting of the Full Council.

#### 2. Recommendations

- 2.1. Consider the recommendations set out in paragraphs 5.10, 6.4 and 7.4 of this report and decide whether it wishes to recommend to the Full Council that changes be made to the Council's Constitution.
- 2.2. That, should the Committee recommend that changes to the Constitution be made, the Full Council be requested to instruct the Head of Governance, People & Performance to amend the Council's Constitution to reflect those changes so they are in place from the municipal year 2024/25.

#### 3. Reasons for the Recommendations

- 3.1. Paragraph 8.3 of the Introduction to Crawley Borough Council's Constitution states that the Governance Committee will monitor and review the operation of the Constitution. Some areas for potential review have become apparent and therefore these issues are being brought before the Committee for its consideration before any changes are put before the Full Council for approval and adoption.

#### 4. Background

- 4.1. Some matters relating to the Constitution have been raised as possible areas for review and the Governance Committee is therefore requested to consider these potential amendments. Namely these matters relate to reviewing the:
- Guillotine procedures.
  - Licensing Sub-Committee (Hearings) Procedure Rules.
  - Order of Business for the Annual Meeting of the Full Council.

- 4.2. For ease, this report is divided into sections which consider each of the areas above. Any recommendations for consideration by the Committee are included within each related section of this report.
- 4.3. It is proposed that, should the Committee be minded to recommend that the Full Council make amendments to the Constitution, those changes be in place from the 2024/25 municipal year.

## **5. The Procedures for Guillotine**

- 5.1. Whilst the guillotine process for meetings of the Full Council has been in place for some time, it was adopted for all other formal meetings of the Council in June 2021 so that a Guillotine would fall at 11pm to ensure the meetings end by 11.30pm. The change was made to take account of the fact that all formal meetings of the Council were being held at the Charis Centre (whilst development of the new Town Hall took place) and it was necessary for the venue to be vacated by midnight.
- 5.2. In addition to a general rule for all formal Council meetings, a specific rule was introduced for the Planning Committee. The Guillotine rules relating to the Full Council remained unchanged. These minor changes to the Procedure Rules were made by the Head of Governance, People & Performance and published in Councillors' Information Bulletins [IB/1085](#) (on 23 June 2021) and [IB/1086](#) (on 30 June 2021).
- 5.3. Now that the new Town Hall is in use, formal meetings are being held in the Committee Rooms within the building itself. It is therefore no longer necessary for meetings which are held in the Town Hall to have a guillotine process as the time for the closure of the building is not restricted.
- 5.4. Whilst the Full Council Procedure Rules retain the guillotine process, following the move to the new Town Hall, they were updated so the process now only comes into effect when a vote to extend the meeting is lost or when the meeting is being held outside the Town Hall and the meeting duration has reached 11pm.
- 5.5. Within the Full Council Procedure Rules, when the business of the Full Council has not been completed within 2½ hours, the Mayor will call for a vote to extend the meeting for up to 30 minutes. A simple majority is required for the meeting to continue. If required, following the meeting's initial extension, further votes may be taken to extend the meeting by periods not exceeding 30 minutes in each case. However, if the Full Council is held outside of the Town Hall no further extensions may be called to extend the meeting beyond that period (normally 11.00pm) when the guillotine will come into effect.
- 5.6. Due to an oversight, the General Committee Procedure Rules were not updated in line with the Full Council Procedure Rules when they were amended following the move to the new Town Hall. Consequentially, as it stands, the guillotine process still comes into effect for Committees at 11pm regardless of the location of the meeting and without the ability for a vote to extend the meeting.
- 5.7. There is currently an assumption that the Guillotine process is now only in effect for meetings of the Full Council (and not Committees), even though the Constitution does not reflect this.

- 5.8. Currently the Rules state that, when the Guillotine comes into effect (i.e. guillotine has fallen), motions and recommendations which have not been dealt with by that time are:
- a) Full Council: Deemed formally moved and seconded with no speeches allowed. The item is voted upon as usual.
  - b) Other meetings (with the exception of Planning Committee): Deemed formally moved and seconded with no speeches allowed. The item is voted upon as usual.
  - c) Planning Committee:
    - Any items not yet under consideration are deferred until the next scheduled meeting. However, for any item requiring a statutory decision before the next scheduled meeting, an additional meeting will be arranged to consider the matter.
    - Any item under consideration at 11pm will be concluded and voted upon (i.e. it will not be deferred).

5.9. Officers would like to gauge a steer from the Governance Committee on the following:

- a) In respect of Guillotine procedure for Committees, which approach:
  - i) Keep the current General Committee Procedure Rule so a “hard” guillotine comes into effect at 11pm.
  - ii) Enable Committees to vote to continue after the meeting has reached 2½ hours (mirroring the Full Council Procedure Rules).
  - iii) Not have a Guillotine process for Committees held inside the Town Hall.

\* For all three options above a “hard” Guillotine would be retained to come into effect at 11pm when Committee are held outside the Town Hall.

- b) In respect of the Guillotine procedure for the Full Council: Consider whether the Governance Committee is happy with the current Guillotine process for meetings of the Full Council or whether it wishes to make any changes.

5.10. **Recommendation:**

***That the Governance Committee consider the options set out in Paragraph 5.9 and make any necessary recommendations to the Full Council.***

## **6. Licensing Sub-Committee (Hearings) Procedure Rules**

- 6.1. A query on procedure was raised following a Sub-Committee. The current Procedure Rules have never expressly stated whether the Licensing Officer, as report author, may question parties during a Sub-Committee. The changes proposed confirm when the Licensing Officer can question or seek clarification from/provide clarification to the relevant parties during the Hearing. It is proposed that the Procedures be amended to avoid any ambiguity. There are further additions to the procedure to ensure that hearings are conducted within the spirit of legislation (i.e. a discursive environment rather than an adversarial one) and with the view to gathering best evidence for the Sub-Committee to consider.

- 6.2. In addition, it has become apparent that although the Licensing Act 2003 does refer to the withdrawal of other types of licensing application, it is silent on the withdrawal of applications to review a licence. Following discussion from our Legal Team, it has been advised that, when a Hearing has been arranged to consider an application to review a licence, that application may not be withdrawn, and a Hearing must be held to consider it and any relevant representations. The consequence is that the related Hearing may not be cancelled, even if the application is withdrawn or an agreement has been reached between the applicant and the relevant premises. It is therefore suggested that the Licensing Sub-Committee (Hearings) Procedure Rules be amended to advise that a Hearing to review a licence may not be cancelled.
- 6.3. Whilst reviewing the Licensing Sub-Committee (Hearings) Procedure Rules (both for in-person and virtual meetings) it has come to light that there are several Rules which would benefit from revision to provide clarity and reflect current legislation. These proposed amendments are also before the Committee for its consideration.
- 6.4. **Recommendation:**

***That the Full Council be recommended to amend the Licensing Sub-Committee (Hearings) Procedure Rules as set out in Appendix A to this report.***

## **7. Order of Business for the Annual Meeting of the Full Council**

- 7.1. Paragraph 2.1 of the “Executive” Functions (the Leader and the Cabinet) states that the Leader will be elected for a four year term of office by the Full Council at its Annual Meeting and will hold office until the Annual Full Council following either the end of their term of office as Leader or their non-election as a Councillor. Paragraph 2.1 continues by stating that, in addition to circumstances where the Leader either resigns from office or ceases to be a Councillor, the Full Council may pass a resolution to remove the Leader from office.
- 7.2. The ability for the Full Council to remove the current Leader from office via a No Confidence Notice of Motion is however not reflected in the Full Council Procedure Rules. It is therefore suggested that it be included in the Order of Business for the Annual Meeting of the Full Council (paragraph 2.1) of the Full Council Procedure Rules for completeness.
- 7.3. It is considered an appropriate time to incorporate this change in time for the 2024/25 municipal year as the current Leader’s seat as a Borough Councillor is up for re-election in the May 2024 election. As such the Annual meeting of the Full Council at the end of May 2024 will be required to elect a Leader so the proposed change would not become relevant until the Annual Meeting of the Full Council in May 2025 at the earliest.
- 7.4. **Recommendation:**

***That the Full Council be recommended to add the following in as new paragraph 2.1(l) (Order of Business for the Annual Meeting of the Full Council) to the Full Council Procedure Rules:***

***“Consider a No Confidence Notice of Motion regarding the current Leader of the Council (if required).”***

## **8. Financial Implications**

8.1. There are no financial implications for the proposed changes.

## **9. Background Papers**

- [Constitution of Crawley Borough Council](#)
- [Licensing Act 2003](#)

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## APPENDIX A

### LICENSING SUB-COMMITTEE (HEARINGS) PROCEDURE RULES

These Rules are divided into two sections relating to the format of the meeting:

- **Section A:** Procedures for In-Person Meetings.
- **Section B:** Procedures for Virtual Meetings.

#### SECTION A: PROCEDURES FOR IN-PERSON MEETINGS

##### 1. SCOPE OF THESE RULES

- 1.1. These Rules apply specifically to Licensing Sub-Committee Hearings under the Licensing Act 2003 ('the Act') and the *Licensing Act 2003 (Hearings) Regulations 2005* ('the Regulations').
- 1.2. These Rules should be read in conjunction with paragraphs 9 (Declarations of Interest), 16 (Councillors' Conduct) and 17 (Disturbance by Public) of the General Committee Procedure Rules as appropriate.
- 1.3. In these Rules all references to "party" and "parties" is a reference to all persons to whom a Notice of Hearing must be given pursuant to Regulation 6 of the Regulations.

##### 2. CONSULTATION PERIOD AND SUBMISSION OF RELEVANT REPRESENTATIONS/DOCUMENTATION

###### Consultation Period and Relevant Representations

- 2.1. The Council encourages that all representations made in relation to an application/notice be submitted by e-form on the Council's website or by e-mail to [licensing@crawley.gov.uk](mailto:licensing@ Crawley.gov.uk) (rather than by post or other means) to reduce the risk that they may not be received or considered by the Council. The Council's website will clearly state this.
- 2.2. When submitting representations/documentation parties are encouraged to provide a contact email address.

###### Submission of Documentation Supporting an Application, Notice or Representation

- 2.3. All parties must use their best endeavours to submit any documentation in support of their application, notice or representation which they wish to be included within the Notice of Hearing electronically to [licensing@crawley.gov.uk](mailto:licensing@ Crawley.gov.uk).
- 2.4. The Council encourages parties to follow these principles when drafting submissions in support of their application, notice or representation:
  - a) Focus on the promotion of one or more of the four Licensing Objectives as defined by the Act.
  - b) Make reference to the relevant parts of the Council's Licensing Policy

Statement and Section 182 Guidance.

- c) Be relevant.
  - d) Be evidence-led not based on speculation.
- 2.5. Parties should endeavour to submit all additional documentation they wish to be considered by the Sub-Committee (which was not included in the Notice of Hearing) no later than 48 hours before the Hearing so that it can be circulated to all other parties. All submissions and supporting documentation/evidence should be submitted by email to [democratic.services@crowley.gov.uk](mailto:democratic.services@crowley.gov.uk).

### **Submission of CCTV and Audio Evidence**

- 2.6. Any video evidence submitted before a Hearing which a party wishes the Sub-Committee to view should be submitted in MP4 format. Parties are asked to ensure that any recording is edited to only contain relevant matters which relate to their representation. Parties are encouraged to submit any video evidence with a description of how, when and where the video was recorded and a summary of its contents.
- 2.7. Parties should endeavour to submit any video evidence they wish to rely upon at least 72 hours before the Hearing to allow sufficient time for it to be made available to the other parties.

## **3. NOTICE OF HEARING, AGENDA DOCUMENTS, NOTICE OF INTENTION TO ATTEND AND CANCELLATION OF THE HEARING**

### **Notice of Hearing and Agenda**

- 3.1. A Notice of Hearing (in the form of an agenda) will be sent via email to all parties at least ten clear working days before the meeting. The Notice will also be published via the Council's website in line with normal procedure. The Notice will include:
- a) Details of the date and time of the Hearing.
  - b) The report of the Council's Licensing Officer.
  - c) The application/notice.
  - d) Any relevant representations/notices received.
  - e) Any other supporting documentation submitted.
  - f) A copy of these Licensing Sub-Committee (Hearings) Procedure Rules.
  - g) A "Parties' Notice of Intention" form.

### **Notice of Intention to Attend and Request for Permission for other Persons to Attend**

- 3.2. All parties must provide written notification of the following to the Council:
- a) Whether they intend to attend or be represented at the Hearing, or whether they consider a Hearing to be unnecessary.
  - b) Whether they wish any other person (other than the person they intend to represent them at the Hearing) to appear at the Hearing and why.
- 3.3. ~~All parties wishing to participate in the Hearing must register their wish to participate and provide their own email address and the email address(es) of any~~

~~representatives/witnesses they wish to speak at the meeting. This must be done by returning the "Parties' Notice of Intention" form via email to the Council at [democratic.services@ Crawley.gov.uk](mailto:democratic.services@ Crawley.gov.uk) no later than five working days before the day of the Hearing~~ The above information **must** be provided by completing and returning a "Parties' Notice of Intention" form via email to the Council at [democratic.services@ Crawley.gov.uk](mailto:democratic.services@ Crawley.gov.uk) within the following deadlines:

- a) For Hearings under section 48(3)(a) (cancellation of interim authority notice following police objection), or section 105(2)(a) (counter notice following police objection to temporary event notice) – **no later than one working day before the day or the first day on which the Hearing is to be held.**
  - b) For a Hearing under section 167(5)(a) (review of premises licence following closure order), section 53C (review of premises licence following review notice), paragraph 4(3)(a) of Schedule 8 (determination of application for conversion of existing licence), paragraph 16(3)(a) of Schedule 8 (determination of application for conversion of existing club certificate), or paragraph 26(3)(a) of Schedule 8 (determination of application by holder of justices' licence for grant of personal licence) – **no later than two working days before the day or the first day on which the Hearing is to be held.**
  - c) For all other Hearings, **no later than five working days before the day (or the first day) on which the Hearing is to be held.**
- 3.4. ~~Where a party has informed the Council they neither intend to attend or be represented, the Hearing will proceed in their absence, and the decision will be taken based on the information available at the Hearing. Applicants are encouraged to attend the Hearing although they may choose not to attend and instead allow the decision to be considered on the basis of the written representations, and for the decision to be taken based on the information available at the Hearing.~~
- 3.5. Where it is unclear whether a party (or their representative) intends to attend the Hearing, the Council will consider whether the Hearing will proceed in their absence and the decision will be taken based on the information available at the Hearing, or if it is in the public interest to adjourn the Hearing to a specified date.
- 3.6. At the Hearing, the Council will consider the application, representations or notice made by any absent party.

#### **Cancellation of the Hearing**

- 3.7. If the application (other than an application for review) is withdrawn, or all relevant representations are withdrawn, or an agreement is reached between the applicant and those who have submitted a representation, the Hearing will be cancelled as there will be no business to be considered. However, **relevant representations can only be withdrawn in writing more than 24 hours before the Hearing is due to take place. After that, the meeting will not be cancelled and any party wishing to withdraw their representation can do so at the Hearing on that basis.**

#### **4. SPECIFIC LICENSING SUB-COMMITTEE (HEARINGS) RULES**

- 4.1. **Establishment of a Sub-Committee:** A Sub-Committee will only be arranged when there is a requirement for a Hearing as defined in the Act.



- 4.2. **Membership:** A Sub-Committee will consist of a panel of three Councillors drawn from a pool of four Councillors who have confirmed that they are available to attend the scheduled Hearing. (The purpose of having four is to ensure that there is a reserve Councillor available to substitute for one of the other three Councillors in the event that one of the others cannot attend due to unforeseen circumstances.) The pool of four Councillors will be drawn from the Councillors appointed to the Licensing Committee. Endeavours will be made for the Sub-Committee membership to be drawn from different political parties where possible, although this is not a requirement in law.
- 4.3. **Quorum:** The quorum of a Sub-Committee will be three.
- 4.4. **Appointment of Chair:** A Chair will be elected from the membership of the panel.
- 4.5. **Officer Attendance:** ~~A Council legal advisor ('Legal Clerk'), Democratic Services Officer and Licensing Officer will usually attend a Sub-Committee for the sole purpose of providing advice on law and procedure.~~ **The following Council officers will usually attend a Licensing Sub-Committee:**
- a) **Legal Advisor to provide advice on law, evidence and procedure.**
  - b) **Democratic Services Officer to co-ordinate the arrangements for the Hearing, take a record of the meeting proceedings and provide advice on procedure.**
  - c) **Licensing Officer (Report Author) to present the report and provide the Sub-Committee with clarifications and technical advice.**
  - d) **Where the Council has made the application or submitted a representation as a Responsible Authority, an additional Licensing Officer will attend to represent the Council (Responsible Authority).**
- 4.6. **Sub-Committee Pre Meeting:** The Sub-Committee will usually meet with the Democratic Services Officer and Legal Advisor in advance of a Hearing. The purpose of this meeting will be to identify any matters upon which the Sub-Committee may require clarification (see Paragraph ~~5.4 — Order of Business~~ **5 - Hearing Procedure**), to ensure the Sub-Committee members have all the documentation for the Hearing, and to remind themselves of the Hearing Procedure. During any pre-meeting **no** decisions will be made and **no** discussions will take place regarding the substantive merits of the application or representations.
- 4.7. **Minutes:** The minutes of the Sub-Committee remain the responsibility of the Licensing Committee and will be brought before a minimum of ten Committee Members for their approval at a Licensing Committee meeting. Only a member of the relevant Sub-Committee is permitted to question the accuracy of the minutes. Once the minutes have been agreed, they shall be signed by a member of that Sub-Committee, which would normally be the Chair of the Panel.
- 4.8. **Procedure at the Meeting:** The procedure to be followed at Sub-Committee meetings is outlined later in these Rules.
- 4.9. **Additional Information:** When making their presentation/s, parties may only introduce documentary or other information produced either before the Hearing or, with the consent of all the other parties, at the Hearing.
- 4.10. **Duration of Representations:** Each party will be given an equal amount of time to make representations. The amount of time will be at the Chair's discretion based on the number of parties present.

- 4.11. **Exclusion of the Public/Retiring for Deliberation:** By virtue of Regulation 14 of the Regulations, the Sub-Committee shall exclude from all or part of the Hearing any member of the public and/or any other person present at the Hearing if it believes that the public interest in doing so outweighs the public interest in allowing the person(s) in question to remain.

This exclusion will be used when the Sub-Committee retires for its deliberations.

## 5. HEARING PROCEDURE

- 5.1. **Order of Business:** Each Sub-Committee will usually follow the procedure below. ~~However, a Sub-Committee may decide to vary the order of business below if it considers it appropriate, after it has first sought and considered any views of the parties present.~~ A Sub-Committee may decide to vary the order of business below if it considers it necessary to do so in the interests of affording the Applicant or the Respondent (in a Review Hearing) a fair Hearing or to take into account all relevant considerations. The Sub-Committee will seek and consider any views of the parties present.
- 5.2. The Sub-Committee will appoint a Chair for the duration of the meeting.
- 5.3. The Chair will explain the Hearing Procedure.
- 5.4. The Sub-Committee will decide whether to hold the Hearing in a party's absence (if their intention to attend is unknown) or whether it would be in the public interest to adjourn to another date.
- 5.5. The Chair will ask all parties present to introduce themselves.
- 5.6. The Applicant, the Respondent (in a Review Hearing) or any other party may be represented by a friend or a professional person to speak on their behalf who will follow the same procedure as described below and those being represented may be called as a witness.
- NB: In a Review Hearing, the Applicant will be either a Responsible Authority or an Other Person and the Respondent will be the Licence Holder.
- 5.7. The Legal ~~Advisor~~ Clerk will ask if any of the parties at that point have an application to make (for example for an adjournment).
- 5.8. The Sub-Committee will consider and decide on any applications made.
- 5.9. The Sub-Committee, as advised by the Legal Advisor, will consider any requests from the parties set out in their Notice of Intention form for permission for another person to appear at the Hearing. The Sub-Committee will not unreasonably withhold permission. Any such person given permission to appear is referred to as "witness" in this Procedure.
- 5.10. The Legal ~~Advisor~~ Clerk will inform the meeting whether, during any pre-meeting, the Sub-Committee sought clarification on any aspect of the application.
- 5.11. The ~~Council's~~ Licensing Officer (Report Author) will outline the application, any relevant representations and highlight any points relevant to the Licensing Authority's Statement of Licensing Policy and statutory guidance. Alternatively, the Licensing Officer (Report Author) may summarise the key points of the report on the agenda. ~~present the report which details the application and relevant representations. Any~~

updates which have taken place since the report was published will also be provided at this stage.

- 5.12. The Sub-Committee may ask the Licensing Officer (**Report Author**) any questions in relation to the report.
- 5.13. ~~In the order listed below, Each party will present their application / representation to the Sub-Committee, including, with the permission of the Sub-Committee, presenting evidence from any witness they have brought with them.~~
- 5.14. **During the Hearing, the Sub-Committee will allow the parties an equal maximum amount of time to address the Sub-Committee, but all parties should keep points relevant and the discussion moving in the interests of time, cost and efficiency. The overriding principle for the Licensing Authority will be to ensure that all parties receive a fair Hearing.**
- 5.15. **If a party attempts to introduce information, evidence or documentation which is not relevant to the Hearing or may constitute a data breach, the Legal Advisor will determine whether or not it should be heard. This may require an adjournment to allow the Legal Advisor to review the content in private with the party in question.**
- 5.16. **Presentations will take place in the following order:**

<b>Review Hearings i.e. an application for a review of a premises licence or club premises certificate</b>	<b>All other Hearings</b>
1. The Applicant for the review <b>(Responsible Authority or an Other Person)</b>	1. The Applicant <b>(licence/certificate holder)</b>
2. Those who made a relevant representation in respect of the application, in this order: <ul style="list-style-type: none"> <li>a) Any <b>R</b>esponsible <b>A</b>uthorities (as defined in the Act) other than the Applicant. If more than one, in the order determined between themselves, or as decided by the Sub-Committee in the absence of an agreement.</li> <li>b) Any <b>O</b>ther <b>P</b>erson. If more than one, in the order determined between themselves, or as decided by the Sub-Committee in the absence of an agreement.</li> </ul>	2. Those who made a relevant representation in respect of the application, in this order: <ul style="list-style-type: none"> <li>a) Any <b>R</b>esponsible <b>A</b>uthorities (as defined in the Act). If more than one, in the order determined between themselves, or as decided by the Sub-Committee in the absence of an agreement.</li> <li>b) Any <b>O</b>ther <b>P</b>erson. If more than one, in the order determined between themselves, or as decided by the Sub-Committee in the absence of an agreement.</li> </ul>

<b>Review Hearings i.e. an application for a review of a premises licence or club premises certificate</b>	<b>All other Hearings</b>
3. <b>The Respondent</b> ( <del>the</del> licence/certificate holder)	

5.17. After each party's presentation (including any evidence from witnesses) **the following will take place:**

- a) The Sub-Committee will lead a discussion on the issues raised, including asking any questions of the presenting party and/or their witnesses, and the Legal ~~Advisor Clerk~~ will ensure that any such requests are satisfactorily addressed; and
- b) Each **Responsible Authority or Other Person** (in the order set out above) may, with the permission of the Sub-Committee, ask questions of the presenting party and/or their witnesses.
- c) **The Sub-Committee may invite the Licensing Officer (Report Author) to provide clarification or technical advice on a specific point arising from a presentation. The Sub-Committee may also allow a request from the Licensing Officer (Report Author) to provide clarification or technical advice.**

5.18. **Although a party may ask questions of another party with the Sub-Committee's permission, that questioning should not amount to cross-examination. Cross-examination may be defined as (but is not limited to):**

- a) **Advancing one's case by putting it to witnesses from the other side and getting them to say things which support that case; or**
- b) **Undermining the case of the other side by exposing weaknesses in the reliability and credibility of its evidence (e.g. attempting to show that a witness' account is mistaken, inconsistent or deceitful).**

**N.B: If a party wishes to cross-examine another party (or their witness), permission must first be sought from the Sub-Committee. Cross-examination will only be permitted if the Sub-Committee considers it necessary to enable it to consider the representations or application. If any party feels that it is being cross-examined where permission has not been given, this should be raised with the Chair at the Hearing. The Chair will intervene to stop cross-examination that has not been authorised.**

5.19. Any closing statements will be made in the same order as described in ~~5.16~~ **3.10** above. **The Chair will then ask all parties if they are satisfied that they have said all they wish to (the Licence Holder will have the last word).**

5.20. The Sub-Committee shall retire in private for its deliberation (~~along with the Legal Clerk, to provide legal advice, and the Democratic Services Officer, for minuting purposes~~) to consider the application and other representations made, both written and oral. **The Sub-Committee will be joined by the Legal Advisor (for advice on the law, evidence or procedure) and the Democratic Services Officer (for minuting purposes and procedural advice).**

5.21. **If, after the Sub-Committee has withdrawn to make its decision, it decides that it needs to ask a question of any of the parties involved in the proceedings or wishes to clarify any matter then it shall do so in the presence of all parties.**

- 5.22. **Members of the Sub-Committee must be present throughout the Hearing and must not communicate with any party involved in the proceedings except for when they are in the presence of all the parties and the remainder of the Sub-Committee.**
- 5.23. When the Sub-Committee returns from its deliberations, the Legal ~~Clerk~~ **Advisor** will summarise any legal advice given during the Sub-Committee's deliberations.
- 5.24. The Sub-Committee's decision will be given by the Chair (or the Chair may invite the Legal ~~Clerk~~ **Advisor** to do so).
- 5.25. A full written version of the decision will be provided to all parties within the timeframe prescribed by the Act.

## **SECTION B: PROCEDURE FOR VIRTUAL MEETINGS**

NB. This section will only come into force if, and when, fully virtual Sub-Committee meetings are able to place.

### **6. SCOPE OF THESE RULES**

- 6.1 These Rules apply specifically to Licensing Sub-Committee Hearings under the Licensing Act 2003 ('the Act') and the *Licensing Act 2003 (Hearings) Regulations 2005* ('the Regulations').
- 6.2 These Rules form part of the Council's Hearings Procedures and should be read in conjunction with the Virtual Committee Procedure Rules as well as paragraphs 9 (Declarations of Interest) and ~~47~~ **18** (Disturbance by Public) of the General Committee Procedure Rules as appropriate.
- 6.3 **When relevant and when legislation allows** these Rules will replace the ~~previously published~~ Licensing Sub-Committee (Hearings) Procedure Rules to reflect that all Licensing Sub-Committee (Hearings) ~~will be~~ **which are** held virtually via Microsoft Teams Live ~~until such time as it is deemed safe by the Government to hold public meetings.~~
- 6.4 In these Rules all references to "party" and "parties" is a reference to all persons to whom a Notice of Hearing must be given pursuant to Regulation 6 of the Regulations.

### **7. CONSULTATION PERIOD AND SUBMISSION OF RELEVANT REPRESENTATIONS/DOCUMENTATION**

#### **Consultation Period and Relevant Representations**

- 7.1. The Council encourages that all representations made in relation to an application/notice be submitted by e-form on the Council's website or by e-mail to [licensing@ Crawley.gov.uk](mailto:licensing@ Crawley.gov.uk) (rather than by post or other means) to reduce the risk that they may not be received or considered by the Council. The Council's website will clearly state this.
- 7.2. As ~~all the~~ **the** Hearings ~~until further notice~~ will be held virtually through Microsoft Teams Live Event, when submitting representations/documentation parties are asked to provide a contact email address.

### **Submission of Documentation Supporting an Application, Notice or Representation**

- 7.3. All parties must use their best endeavours to submit documentation in support of their application, notice or representation which they wish to be included within the Notice of Hearing electronically to [licensing@crowley.gov.uk](mailto:licensing@crowley.gov.uk).
- 7.4. The Council encourages parties to follow these principles when drafting submissions in support of their application, notice or representation:
- a) Focus on the promotion of one or more of the four Licensing Objectives as defined by the Act.
  - b) Make reference to the relevant parts of the Council's Licensing Policy Statement and Section 182 Guidance.
  - c) Be relevant.
  - d) Be evidence-led not based on speculation.
- 7.5. Parties should endeavour to submit all additional documentation they wish to be considered by the Sub-Committee (which was not included in the Notice of Hearing) no later than 48 hours before the Hearing so that it can be circulated to all other parties. All submissions and supporting documentation/evidence should be submitted by email to [democratic.services@crowley.gov.uk](mailto:democratic.services@crowley.gov.uk).

### **Submission of CCTV and Audio Evidence**

- 7.6. Any video evidence submitted before a Hearing which a party wishes the Sub-Committee to view should be submitted in MP4 format. Parties are asked to ensure that any recording is edited to only contain relevant matters which relate to their representation. Parties are encouraged to submit any video evidence with a description of how, when and where the video was recorded and a summary of its contents.
- 7.7. Parties should endeavour to submit any video evidence they wish to rely upon at least 72 hours before the Hearing to allow sufficient time for it to be made available to the other parties.

## **8. NOTICE OF HEARING, AGENDA DOCUMENTS, NOTICE OF INTENTION TO ATTEND AND CANCELLATION OF THE HEARING**

### **Notice of Hearing and Agenda**

- 8.1. A Notice of Hearing (in the form of an agenda) will be sent via email to all parties at least ten clear working days before the meeting. The Notice will also be published via the Council's website in line with normal procedure. The Notice will include:
- a) Details of the date and time of the online Hearing.
  - b) The report of the Council's Licensing Officer.
  - c) The application/notice.
  - d) Any relevant representations/notices received.
  - e) Any other supporting documentation submitted.
  - f) A copy of these Virtual Licensing Sub-Committee (Hearings) Procedure Rules.
  - g) A copy of the Virtual Committee Procedure Rules.

## **Notice of Intention to Attend and Request for Permission for other Persons to Attend**

- 8.2. All parties must provide written notification of the following to the Council:
- a) Whether they intend to attend or be represented at the Hearing, or whether they consider a Hearing to be unnecessary.
  - b) Whether they wish any other person (other than the person they intend to represent them at the Hearing) to appear at the Hearing and why.
- 8.3. ~~All parties wishing to participate in the Hearing must register their wish to participate and provide their own email address and the email address(es) of any representatives/witnesses they wish to speak at the meeting. This must be done by email to the Council at [democratic.services@ Crawley.gov.uk](mailto:democratic.services@ Crawley.gov.uk) within the appropriate timeframe as set out below.~~ The above information **must** be provided by completing and returning a "Parties' Notice of Intention" form via email to the Council at [democratic.services@ Crawley.gov.uk](mailto:democratic.services@ Crawley.gov.uk) within the following deadlines:
- a) For Hearings under section 48(3)(a) (cancellation of interim authority notice following police objection), or section 105(2)(a) (counter notice following police objection to temporary event notice) – **no later than one working day before the day or the first day on which the Hearing is to be held.**
  - b) For a Hearing under section 167(5)(a) (review of premises licence following closure order), section 53C (review of premises licence following review notice), paragraph 4(3)(a) of Schedule 8 (determination of application for conversion of existing licence), paragraph 16(3)(a) of Schedule 8 (determination of application for conversion of existing club certificate), or paragraph 26(3)(a) of Schedule 8 (determination of application by holder of justices' licence for grant of personal licence) – **no later than two working days before the day or the first day on which the Hearing is to be held.**
  - c) For all other Hearings, ~~no later than 72 hours~~ **five working days** before the day (or the first day) on which the Hearing is to be held.
- 8.4. ~~Where a party has informed the Council they neither intend to attend or be represented, the Hearing will proceed in their absence, and the decision will be taken based on the information available at the Hearing. Applicants are encouraged to attend the Hearing online although they may choose not to attend and instead allow the decision to be considered on the basis of the written representations, and for the decision to be taken based on the information available at the Hearing.~~
- 8.5. Where it is unclear whether a party (or their representative) intends to attend the Hearing, the Council will consider whether the Hearing will proceed in their absence and the decision will be taken based on the information available at the Hearing, or if it is in the public interest to adjourn the Hearing to a specified date.
- 8.6. At the Hearing, the Council will consider the application, representations or notice made by any absent party.

### **In Advance of the Hearing**

- 8.7. The Sub-Committee, in discussion with the Democratic Services Officer and Legal ~~Clerk~~ **Advisor**, will decide upon a practical protocol for management of the Hearing and decision-making in an online environment (e.g. self-introduction before speaking, asking all participants to keep their microphones on mute when not speaking, etc).

Such a protocol can be amended from time to time and does not require Committee approval for any change.

- 8.8. The Council will email an invitation to join the Hearing to all parties (and their representatives/witnesses) who **notified the Council of their intention to attend or be represented at the Hearing** ~~registered their wish to participate~~ within the time set out in Paragraph 8.3 ~~3.2~~ above and where an email address has been provided.
- 8.9. All parties are requested to join the Microsoft Teams Live Event meeting 15 minutes before the scheduled start time of the Hearing to ensure that communication between the Sub-Committee, officers and all parties is working correctly.

### **Cancellation of the Hearing**

- 8.10. If the application (**other than an application for review**) is withdrawn, **or all relevant representations are withdrawn**, ~~or an agreement is reached between the applicant and those who have submitted a representation~~, the Hearing will be cancelled as there will be no business to be considered. However, **relevant representations can only be withdrawn in writing more than** ~~should the withdrawal or agreement be confirmed less than~~ 24 hours before the Hearing is due to take place. **After that**, the meeting will not be cancelled **and any party wishing to withdraw their representation can do so at the Hearing on that basis.**

## **9. SPECIFIC LICENSING SUB-COMMITTEE (HEARINGS) RULES**

- 9.1. **Establishment of a Sub-Committee:** A Sub-Committee will only be arranged when there is a requirement for a Hearing as defined in the Act.
- 9.2. **Membership:** A Sub-Committee will consist of a panel of three Councillors drawn from a pool of four Councillors who have confirmed that they are available to attend the scheduled Hearing. (The purpose of having four is to ensure that there is a reserve Councillor available to substitute for one of the other three Councillors in the event that one of the others cannot attend due to unforeseen circumstances.) The pool of four Councillors will be drawn from the Councillors appointed to the Licensing Committee. Endeavours will be made for the Sub-Committee membership to be drawn from different political parties where possible, although this is not a requirement in law.
- 9.3. **Quorum:** The quorum of a Sub-Committee will be three.
- 9.4. **Appointment of Chair:** A Chair will be elected from the membership of the panel.
- 9.5. **Participation in the Hearing:** Members of the Sub-Committee, officers, and all relevant parties, including Applicants, Interested Parties and Responsible Authorities will be invited to join (attend) the meeting remotely via a Microsoft Teams participation feed. Such invitation links must not be shared. Microsoft Teams enables individuals to view and participate in a video-conference using a desktop computer or laptop.



- 9.6. **Officer Participation:** ~~A Council legal advisor ('Legal Clerk'), Democratic Services Officer/s (which may include a Producer) and Licensing Officer/s will usually participate in a Sub-Committee for the purposes of facilitating the meeting and providing advice on law and procedure.~~ The following Council officers will usually attend a Licensing Sub-Committee:
- a) A ~~Council~~ Legal Advisor to provide advice on law, evidence and procedure.
  - b) Democratic Services Officer to co-ordinate the arrangements for the Hearing, take a record of the meeting proceedings and provide advice on procedure.
  - c) Licensing Officer (Report Author) to present the report and provide the Sub-Committee with clarifications and technical advice.
  - d) Where the Council has made the application or submitted a representation as a Responsible Authority, an additional Licensing Officer will attend to represent the Council (Responsible Authority).
- 9.7. **Observation of the Hearing:** To meet the legal requirement for Hearings to be held in public, members of the press and public will be able to observe (but not participate in) the Hearing meetings online via a public feed. Councillors who are not members of the Sub-Committee must also view the meeting through the public feed rather than directly participating in the meeting.
- 9.8. **Sub-Committee Pre-Meeting:** The Sub-Committee will usually meet virtually with the Democratic Services Officer and Legal Advisor in advance of a Hearing. This pre-meeting will be held in private, and will not be streamed via the public feed. The purpose of this meeting will be to identify any matters upon which the Sub-Committee may require clarification (see Paragraph 5.6 ~~Order of Business~~ 10 - Hearing Procedure), to ensure the Sub-Committee members have all the documentation for the Hearing, and to remind themselves of the Hearing Procedure. During any pre-meeting **no** decisions will be made and **no** discussions will take place regarding the substantive merits of the application or representations.
- 9.9. **Minutes:** The minutes of the Sub-Committee remain the responsibility of the Licensing Committee and will be brought before a minimum of ten Committee Members for their approval at a Licensing Committee meeting. Only a member of the relevant Sub-Committee is permitted to question the accuracy of the minutes. Once the minutes have been agreed, they shall be signed by a member of that Sub-Committee, which would normally be the Chair of the Panel.
- 9.10. **Procedure at the Meeting:** The procedure to be followed at Sub-Committee meetings is outlined later in these Rules.
- 9.11. **Additional Information:** When making their presentation/s, parties may only refer to the documentation/information submitted in advance of the Hearing. Additional/tailed information may only be referred to with the consent of all parties at the Hearing.
- 9.12. **Exclusion of the Public/Retiring for Deliberation:** By virtue of Regulation 14 of the Regulations, the Sub-Committee may exclude from all or part of the Hearing any member of the public and/or any other person present at the Hearing if it believes that the public interest in doing so outweighs the public interest in allowing the person(s) in question to remain. This exclusion will be used when the Sub-Committee retires for its deliberations.

## 10. HEARING PROCEDURE

It should be noted that particular reference should be made to the Virtual Committee Procedure Rules in regard to issues such as adjournments and voting procedures.

- 10.1. **Order of Business:** Each virtual meeting of the Sub-Committee will usually follow the procedure below. However, a Sub-Committee may decide to vary the order of business below if it considers it ~~appropriate~~ **necessary to do so in the interests of affording the Applicant or the Respondent (in a Review Hearing) a fair Hearing or to take into account all relevant considerations. The Sub-Committee will seek and consider any views of the parties present.**
- 10.2. At the commencement of the meeting the Democratic Services Officer will seek nominations for a Chair for the duration of the meeting.
- 10.3. The Chair will make reference to this Hearings Procedure.
- 10.4. **The Sub-Committee will decide whether to hold the Hearing in a party's absence (if their intention to attend is unknown) or whether it would be in the public interest to adjourn to another date.**
- 10.5. The Chair will ask all parties present to introduce themselves.
- 10.6. **The Applicant, the Respondent (in a Review Hearing) or any other party may be represented by a friend or a professional person to speak on their behalf who will follow the same procedure as described below and those being represented may be called as a witness.**  
  
**NB: In a Review Hearing, the Applicant will be either a Responsible Authority or an Other Person and the Respondent will be the Licence Holder.**
- 10.7. The Legal ~~Clerk~~ **Advisor** will ask if any of the parties have an application to make at that point (for example for an adjournment).
- 10.8. The Sub-Committee will consider and decide on any applications made.
- 10.9. **The Sub-Committee, as advised by the Legal Advisor, will consider any requests from the parties set out in their Notice of Intention form for permission for another person to appear at the Hearing. The Sub-Committee will not unreasonably withhold permission. Any such person given permission to appear is referred to as "witness" in this Procedure.**
- 10.10. The Legal ~~Clerk~~ **Advisor** will inform the meeting whether, during any pre-meeting, the Sub-Committee sought clarification on any aspect of the application.
- 10.11. ~~The Council's~~ **Licensing Officer (Report Author) will outline the application, any relevant representations and highlight any points relevant to the Licensing Authority's Statement of Licensing Policy and statutory guidance. Alternatively, the Licensing Officer (Report Author) may summarise the key points of the report on the agenda. present the report which details the application and relevant representations. Any updates which have taken place since the report was published will also be provided at this stage.**
- 10.12. The Sub-Committee may ask the Licensing Officer (**Report Author**) any questions in relation to the report.

- 10.13. ~~In the order listed below,~~ Each party will be given 10 minutes to present their application/representation to the Sub-Committee (their written representations having been considered) **including presenting evidence from any witnesses.**
- 10.14. **During the Hearing, all parties should keep points relevant and the discussion moving in the interests of time, cost and efficiency. The overriding principle for the Licensing Authority will be to ensure that all parties receive a fair Hearing.**
- 10.15. **If a party attempts to introduce information, evidence or documentation which is not relevant to the Hearing or may constitute a data breach, the Legal Advisor will determine whether or not it should be heard. This may require an adjournment to allow the Legal Advisor to review the content in private with the party in question.**
- 10.16. **Presentations will take place in the following order:**

<b>Review Hearings of an application for a review of a premises licence or club premises certificate</b>	<b>All other Hearings</b>
1. The Applicant for the review <b>(Responsible Authority or an Other Person)</b>	1. The Applicant <b>(licence/certificate holder)</b>
2. Those who made a relevant representation in respect of the application, in this order: <ul style="list-style-type: none"> <li>a) Any <b>R</b>esponsible <b>A</b>uthorities (as defined in the Act) other than the Applicant. If more than one, in the order determined between themselves, or as decided by the Sub-Committee in the absence of an agreement.</li> <li>b) Any <b>O</b>ther <b>P</b>erson. If more than one, in the order determined between themselves, or as decided by the Sub-Committee in the absence of an agreement.</li> </ul>	2. Those who made a relevant representation in respect of the application, in this order: <ul style="list-style-type: none"> <li>a) Any <b>R</b>esponsible <b>A</b>uthorities (as defined in the Act). If more than one, in the order determined between themselves, or as decided by the Sub-Committee in the absence of an agreement.</li> <li>b) Any <b>O</b>ther <b>P</b>erson. If more than one, in the order determined between themselves, or as decided by the Sub-Committee in the absence of an agreement.</li> </ul>
3. <b>The Respondent</b> <del>(the</del> <b>licence/certificate holder)</b>	

- 10.17. **After each party's presentation (including any evidence from witnesses) the following will take place:**
- a) The Sub-Committee will lead a discussion on the issues raised, including asking any questions of the presenting party and/or their witnesses, and the Legal ~~Clerk~~ **Advisor** will ensure that any such requests are satisfactorily addressed; and

- b) Each **Responsible Authority or Other Person** (in the order set out above) may, with the permission of the Sub-Committee, ask questions of the presenting party and/or their witnesses.
  - c) The Sub-Committee may invite the Licensing Officer (Report Author) to provide clarification or technical advice on a specific point arising from a presentation. The Sub-Committee may also allow a request from the Licensing Officer (Report Author) to provide clarification or technical advice.
- 10.18. Although a party may ask questions of another party with the Sub-Committee's permission, that questioning should not amount to cross-examination. Cross-examination may be defined as (but is not limited to):
- a) Advancing one's case by putting it to witnesses from the other side and getting them to say things which support that case; or
  - b) Undermining the case of the other side by exposing weaknesses in the reliability and credibility of its evidence (e.g. attempting to show that a witness' account is mistaken, inconsistent or deceitful).
- N.B: If a party wishes to cross-examine another party (or their witness), permission should first be sought from the Sub-Committee. Cross-examination will only be permitted if the Sub-Committee considers it necessary to enable it to consider the representations or application. If any party feels that it is being cross-examined where permission has not been given, this should be raised with the Chair at the Hearing. The Chair will intervene to stop cross-examination that has not been authorised.
- 10.19. Any closing statements will be made in the same order as described in 5.16 ~~3-10~~ above. The Chair will then ask all parties if they are satisfied that they have said all they wish to (the Licence Holder will have the last word).
- 10.20. The Sub-Committee's deliberations will take place without **the parties**, other participants, the press, and members of the public being able to hear or see those deliberations. At this point in the Hearing the live public feed will end and deliberations **to consider the application and other representations made** will take place by way of a separate virtual meeting between the Sub-Committee members, the ~~Legal-Clerk Advisor (to provide legal advice)~~ **(for advice on the law, evidence or procedure)** and the Democratic Services Officer (for minuting purposes **and procedural advice**).
- 10.21. If, after the Sub-Committee has withdrawn from the virtual meeting to make its decision, it decides that it needs to ask a question of any of the parties involved in the proceedings or wishes to clarify any matter then it shall do so in the presence of all parties. The Democratic Service Officer will attempt to reconvene the virtual meeting but, failing this, all parties will (with the main decision notice) be informed of any clarification questions which have been asked by the Sub-Committee (separate to the main Hearing) and the answers which were provided in response.
- 10.22. **Members of the Sub-Committee must be present throughout the virtual hearing and must not communicate with any party involved in the proceedings except for when they are in the (virtual) presence of all of the parties and the remainder of the Sub-Committee.**
- 10.23. The summary decision and reasons will be sent via email to all those who have provided the Democratic Services Officer with a valid email address in advance of the Hearing.

10.24. A full written version of the decision will be provided to all parties within the timeframe prescribed by the Act.