

## **PREMISES LICENCES AND CLUB PREMISES CERTIFICATES - REPRESENTATIONS BY RESPONSIBLE AUTHORITIES: SPENT CONVICTIONS**

### **1. PURPOSE**

- 1.1 To consider adopting procedures to be used when considering premises licence and club premises certificates where a Responsible Authority makes representation and seeks to rely on evidence relating to a spent conviction.

### **2. BACKGROUND**

- 2.1 Under the Rehabilitation of Offenders Act 1974 (ROA 1974), a person who has become a rehabilitated person in respect of a conviction (i.e., where that conviction is “spent”) shall be treated as a person who has not committed, been charged with, prosecuted for, or convicted or sentenced for that offence.
- 2.2 Evidence about a spent conviction will not be admissible in any proceedings before a judicial authority. In any such proceedings, a person shall not be asked and, if asked, shall not be required to answer any question relating to his past which cannot be answered without acknowledging or referring to a spent conviction.

### **3. APPLICATION OF THESE PRINCIPLES TO LICENSING SUB-COMMITTEES**

- 3.1 A Licensing Sub-Committee is a judicial authority for the purposes of ROA 1974. Generally, therefore, a Responsible Authority will not be permitted to rely on evidence of a spent conviction in a hearing before the Licensing Sub-Committee.
- 3.2 However, section 7(3) of ROA 1974 does provide an exemption where, in proceedings before a judicial authority, the authority is satisfied, in light of any considerations which appear to it to be relevant, that justice cannot be done except by admitting or requiring evidence relating to a person’s spent convictions or circumstances ancillary thereto. In that situation, the judicial authority may admit or require evidence of the spent conviction(s).
- 3.3 In light of the above provisions of ROA 1974, where a Responsible Authority makes a representation regarding a premises licence or a club premises certificate and seeks to rely on evidence relating to a spent conviction, it is proposed that the Council follow the procedure set out in Appendix 1.
- 3.4 The procedure relates only to premises licence and club premises certificate hearings and will not be followed in relation to applications concerning personal licences where spent convictions will be disregarded.

### **4. FINANCIAL, ENVIRONMENTAL AND EQUALITIES & DIVERSITY IMPLICATIONS**

- 4.1 There are none.

## **5. CRIME & DISORDER IMPLICATIONS**

- 5.1 A robust and fair procedure will ensure that the Licensing Sub-Committee is able to make informed judgements about whether the licensing objectives will be promoted.

## **6. RECOMMENDATIONS**

- 6.1 That the procedure for hearings of the Licensing Sub-Committee (where they relate to 3.4 above) attached as Appendix 1 to this report be approved.

### **Further Information:**

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### **Background Papers**

None

### PROCEDURE PRIOR TO THE HEARING

1. Where a Responsible Authority:-
  - a) makes a representation in relation to the grant or variation of a premises licence/club premises certificate;
  - b) applies for the review of a premises licence or club premises certificate;
  - c) gives a notice in relation to an application to vary a designated premises supervisor;
  - d) gives a notice in relation to an application to transfer a premises licence;
  - e) gives a notice in relation to an interim authority notice;
  - f) gives a notice in relation to a temporary event notice;

and the Licensing Officer determines (where required by the Licensing Act 2003) that the representations are relevant to one or more of the licensing objectives, the papers containing the representations will be passed by the Licensing Officer to a Committee Administrator.

2. On receipt of the licensing papers the Committee Administrator will pass the papers to Legal Services at the earliest opportunity.
3. Where a Legal Advisor determines that a criminal conviction or caution referred to by the Responsible Authority is spent, the Legal Advisor will make contact with the Responsible Authority in writing.
  - a) The Legal Advisor will question the application of the s.7(3) exemption in the particular case and request confirmation as to why justice cannot be done except by admitting evidence of the spent conviction referred to in the papers.
  - b) A response from the Responsible Authority will be requested in writing.
4. The written request and response will be copied to the Interested Parties.
5. If the Responsible Authority still wishes to rely on the spent conviction, the Committee Administrator will notify the Interested Parties/their representatives in advance of the hearing.
  - a) The Interested Parties/their representatives will be informed that the procedure detailed below will be followed at the hearing.
  - b) Representations or evidence relating to spent convictions will be sent to the Interested Parties/their representatives.
6. Representations or evidence relating to spent convictions will not be sent to the Sub-Committee in advance of the hearing, nor will they be published by the Council in advance of the hearing. However, members of the Sub-Committee will be informed

prior to the hearing that a party does wish to rely on a spent conviction and will be sent a copy of this procedure note in advance.

## **PROCEDURE AT THE HEARING**

7. The Chairman will: -
  - a) Introduce himself/herself, other members of the panel and officers present;
  - b) Confirm the purpose of the hearing;
  - c) Check no members have a personal interest;
  - d) Check if all parties are present.
8. The Chairman will then hand over to the Legal Advisor.
9. The Legal Advisor will inform the Sub-Committee that the Responsible Authority has raised a matter which the Sub-Committee may wish to deal with in private session. The Legal Advisor will inform the Sub-Committee that the Responsible Authority is seeking to rely on evidence of a spent conviction, and that the party seeking to rely on this evidence, and the Interested Parties, should be given the opportunity to make representations regarding the admissibility of this evidence.

### Public or Private Session?

10. In accordance with Regulation 14(2) of the Licensing Act 2003 (Hearings) Regulations 2005, the Sub-Committee will decide whether to exclude the public from the hearing whilst it hears representations regarding the spent conviction(s).
  - a) In reaching this decision, the Sub-Committee will determine whether the public interest in excluding the public from this part of the hearing outweighs the public interest in that part of the hearing taking place in public.
  - b) For these purposes “the public” may include parties to the hearing other than the Interested Parties.

### Representations on admission of spent conviction(s) as evidence

11. The Sub-Committee will then invite the Responsible Authority/their representative to address the Sub-Committee on the following matters: -
  - a) They should identify which licensing objective(s) they consider that the spent conviction is relevant to.
  - b) They should advise the Sub-Committee of the reasons that, in their objective and professional consideration, the spent conviction is capable of having real impact on the promotion of those licensing objective(s).
  - c) They should indicate the class of offence, age of offence and, where appropriate, the seriousness of the offence, gauged by penalty.
12. The Sub-Committee will then invite the other Interested Parties/their representatives to address the Sub-Committee as to why the Responsible Authority should not be entitled to rely on the spent conviction and why the spent conviction does not affect the promotion of the licensing objectives.

13. The Sub-Committee will then adjourn the hearing and will deliberate in private whether to admit the spent conviction(s) in evidence.
  - a) The test to be applied by the Sub-Committee is whether justice cannot be done except by admitting the spent conviction in evidence.
  - b) The focus of the decision will be the promotion of the licensing objectives.

Decision on admission of spent conviction(s) as evidence

14. The Chairman will then reconvene the hearing and will confirm whether or not the Sub-Committee has decided to admit representations/evidence regarding the spent conviction(s). The hearing will normally be reconvened in public session, unless the public interest in excluding the public from the remaining part of the hearing outweighs the public interest in the hearing taking place in public.
15. If the Sub-Committee decides to admit evidence of the spent conviction(s), the Interested Parties are entitled to seek to persuade the Sub-Committee that the conviction(s) are irrelevant or that, by reason of their age, circumstances or lack of seriousness, they should not jeopardise his application/premises licence/club premises certificate.
16. The hearing will then continue in accordance with the Council's standard procedures for Licensing Sub-Committee hearings.