

ANNEX B

**TERMS OF REFERENCE FOR THE LICENSING COMMITTEE AND
ADVISORY PANEL**

ANNEX B
Terms of Reference for the Licensing Committee and Advisory Panel

INTRODUCTION

In May 2008 Parliament gave Bath & North East Somerset Council (“the Authority”) the right to grant a premises licence for a large / small casino under the Gambling Act 2005.

Before granting such a licence, the Authority must hold a competition.

Stage 1 of the competition imposes a regulatory test, whereby applications are tested for their compliance with the gambling licensing objectives, the Gambling Commission’s codes of practice and guidance, and the licensing authority’s licensing policy. If there is more than one winner at Stage 1, then the competition at Stage 2 is activated.

At that stage, the casino licence is to be awarded to the party whose proposal is considered likely to result in the greatest benefit to the authority’s area. To that end, the Authority and the applicant may enter into an agreement for the provision of services or otherwise, the agreement may be enforced as a condition of the licence, and its existence may be taken into account in evaluating the likely benefit of the proposal.

The decision will be taken by the Authority’s Licensing Committee.

However, the Authority has constituted this non-statutory Panel named the Advisory Panel to make recommendations as to how the bids should be evaluated. The Advisory Panel is not a decision-making body, and while the Licensing Committee will take the Panel’s recommendations into account, it is not bound to follow them.

STAGE 1 PROCEDURE

An application for a premises licence or a provisional statement must be made to the Authority in the form and manner prescribed by the Gambling Act 2005 and the Application Regulations.

An application for a premises licence may only be made by a person who:

- i. holds a casino operating licence or has made an application for such an operating licence which has not yet been determined; and
- ii. has a right to occupy the premises to which the application relates.

If the applicant cannot satisfy these requirements, he may nevertheless apply for a provisional statement.

Following the making of the application, the applicant must give notice to the responsible authorities, advertise the application and display a site notice, all in accordance with the Application Regulations.

Representations may be made on the application by responsible authorities and interested parties, as defined by the Act. For this purpose, each competing applicant for the casino premises licence is an interested party and so can make representations in relation to each of the competing applications. The period for representations set out in the Application Regulations is 28 days beginning on the date on which the application was made. If the Authority considers a representation to be vexatious, frivolous or certainly not such as to influence its determination of the application, it will disregard it.

Unless the applicant and also interested parties or responsible authorities consent to a determination without a hearing, the Authority must hold a hearing to consider each application if:

- a. there remain live representations from interested parties or responsible authorities;
- b. the Authority proposes to attach an individual condition to the premises licence;
- c. the authority proposes to exclude a default condition from the licence.

This hearing will be held before the Committee and will be governed by the Hearings Regulations and the Committee's established procedures for premises licence applications.

In considering the merits of the application at Stage 1, the Sub-Committee will apply the test set out in section 153 of the Gambling Act 2005. In particular, it must aim to permit the use of premises for gambling in so far as it thinks it:

- a. in accordance with any relevant code of practice issued by the Gambling Commission;
- b. in accordance with any relevant Guidance issued by the Gambling Commission;
- c. reasonably consistent with the licensing objectives¹ (subject to paragraphs (a) and (b)), and

¹ The licensing objectives are: (a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime, (b) ensuring that gambling is

ANNEX B
Terms of Reference for the Licensing Committee and Advisory Panel

- d. in accordance with the statement published by the Authority under section 349 (subject to paragraphs (a) – (c)).

In making its determination, the Sub-Committee must disregard:

1. the expected demand for the proposed facilities;
2. whether or not the proposal is likely to be permitted in accordance with the law relating to planning or building;
3. any information which is relevant to a determination at Stage 2, unless that information is also relevant to the determination at Stage 1. So, for example, information regarding the benefit of the proposal to the area would be disregarded;
4. whether any of the competing applications is more deserving of being granted.

Following the Stage 1 procedure, if there is only one successful applicant, a casino premises licence (or provisional statement as the case may be) will be awarded to that applicant. If there is more than one successful applicant, then all of the successful applicants will be invited to participate in Stage 2 of the competition.

There is a right of appeal against the Sub-Committee's decision at Stage 1 of the process. Pending completion of the appeal, Stage 2 of the competition will be suspended.

STAGE 2 PROCEDURE

(A) THE ADVISORY PANEL

Stage 2 applicants will be invited to complete a form and supply plans and attachments, demonstrating how their proposal is likely to benefit the Council's area.

All Stage 2 applications will then be placed before the Advisory Panel.

Following perusal of the applications, the Panel may request officers of the Authority to engage in discussions or negotiations with each Stage 2 applicant with a view to the particulars of their application being refined, supplemented or otherwise altered so as to maximise the benefits to the Authority's area, should the application be granted. If the discussions are with a view to particulars of the application being improved or altered (rather than merely clarified or particularised), the same invitation will be offered to all other applicants to ensure equal treatment.

Wherever possible, such discussions will take place in writing to ensure transparency. The Panel itself will not correspond with applicants but will direct correspondence through the Council officer assigned to act as the single point of contact with the applicant.

Where oral discussions occur, these will take place with nominated Council officers and will be fully minuted for the Panel's benefit.

The Advisory Panel may elect to interview applicants. If so, all applicants will be interviewed. The purpose of the interview will be to clarify the application and not to negotiate with the applicant. All interviews will be minuted. To ensure equality of treatment, all applicants will be asked the same questions at interview.

The applicant will be invited to amend his bid documentation to reflect any clarifications or alterations to the bid arising from the above process. At this stage, any suggested changes going beyond the agreed clarifications or amendments will be disregarded.

Following completion of the bid documentation, the Advisory Panel will evaluate each bid.

The evaluation will consist of:

(1) A qualitative appraisal.

(2) A quantitative appraisal against each of the principles in the Principles and Weighting document. For each principle, the Panel will make a recommendation as to which of the following bands the application should be placed within and, if it wishes, the broad positioning within the band:

- 90 – 100 Outstanding
- 80-90 Excellent
- 70-80 Very good
- 60-70 Good
- 50-60 Average
- 40-50 Below average
- 30-40 Poor
- 20-30 Very poor
- 10-20 Extremely poor

ANNEX B
Terms of Reference for the Licensing Committee and Advisory Panel

0-10 No significant response

In reaching a unified score for each principle, the Panel may choose its own method, for example by taking an average or median score, rounding up or down, or some other method, provided that the same method is used consistently for all applicants.

(3) An assessment of the deliverability of the scheme, taking account of all material factors including, but not limited to, the practicability of the scheme, the applicant's standing and track record of delivery, any legal agreement offered and any guarantor willing to guarantee delivery of the proposals.

The Panel will supply its draft evaluation to the relevant applicant to enable the relevant applicant to correct factual errors or to make representations as to the scoring or qualitative evaluation. No new information will be accepted at this stage. Following any reply by the applicant, the Panel will complete its recommendation and forward it together with the applicant's representations to the Licensing Subcommittee for final determination. At this point, the role of the Advisory Panel ceases.

Matters to be disregarded by the Advisory Panel

The following matters must be disregarded by the Panel as a matter of law:

1. the expected demand for the proposed facilities;
2. whether or not the proposal is likely to be permitted in accordance with the law relating to planning or building;
3. any pre-existing contract, arrangement or other relationship between the Authority and any person. This includes a contract for the sale or lease of land and a section 106 agreement;

Conduct of members of Advisory Panel

1. The members undertake to act in accordance with the Model Code of Conduct. Without prejudice thereto:
 - a. members will act in accordance with the Ten General Principles of Public Life set out in the Annex hereto;
 - b. members will declare any personal interest in the outcome of the competition, and will withdraw from participation if they have a prejudicial interest.
2. Members will have no contact with applicants or their representatives save as specified above.
3. Members will ensure so far as they are able that all applicants receive equal treatment.
4. Members will not discuss their participation on the Advisory Panel or the merits of the respective bids with any other person (including the press), whether during the process or after its completion.
5. The content of the bids and all communications with each party is entirely confidential. Members should not disclose any information concerning any bid to any person, including any other party.
6. All members should sign for receipt and acceptance of these Terms of Reference.

(B) THE LICENSING COMMITTEE

The overriding test for the Committee is that the Authority should determine which of the competing applications would, in the Authority's opinion, be likely if granted to result in the greatest benefit to the Authority's area. In determining this, the Authority may have regard to the effect of an agreement entered into by the Applicant whether as to the provision of services or otherwise.

In each case, the Licensing Committee will be provided with a copy of the application pack, the Stage 1 decision, the Stage 2 application form and associated documents (with any amendments), all correspondence and minutes, and the Advisory Panel's draft and final recommendations together with the applicant's representations.

The Committee will evaluate the respective merits of the applications against the *Principles and Weighting* document.

The Committee will be unlikely to need to interview applicants or seek further evidence or representations. If, in an exceptional case, it decides to do so, the same facility must be offered to all applicants to ensure equality of treatment. It will take any legal advice it requires. The legal adviser will play no part in judging the applications or making the decision.

The casino licence or provisional statement should be offered to the highest ranked applicant at Stage 2, subject to completion of any agreement offered at Stage 2. If the agreement is not completed, the Authority should consider whether to award the licence or provisional statement to the next-ranked applicant, provided that it is satisfied that, in the circumstances, that applicant's proposal would be likely to result in the greatest benefit to the area.

Matters to be disregarded by Licensing Committee

The following matters must be disregarded by the sub-committee as a matter of law:

1. the expected demand for the proposed facilities;
2. whether or not the proposal is likely to be permitted in accordance with the law relating to planning or building;
3. any pre-existing contract, arrangement or other relationship between the Authority and any person. This includes a contract for the sale or lease of land and a section 106 agreement.

Conduct of members of Licensing Committee

1. The members undertake to act in accordance with the Model Code of Conduct. Without prejudice thereto:
 - a. members will act in accordance with the Ten General Principles of Public Life set out in the Annex hereto;
 - b. members will declare any personal interest in the outcome of the competition, and will withdraw from participation if they have a prejudicial interest.
2. Members will have no contact with applicants or their representatives save as specified above.

ANNEX B
Terms of Reference for the Licensing Committee and Advisory Panel

3. Members will ensure so far as they are able that all applicants receive equal treatment.
4. Members will not discuss their participation on the Licensing Committee or the merits of the respective bids with any other person (including the press), whether during the process or after its completion.
5. The content of the bids and all communications with each party is entirely confidential. Members should not disclose any information concerning any bid to any person, including any other party.
6. All members should sign for receipt and acceptance of these Terms of Reference.

ANNEX – THE TEN GENERAL PRINCIPLES OF PUBLIC LIFE

Selflessness – members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and integrity – members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly, and should on all occasions avoid the appearance of such behaviour.

Objectivity – members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability – members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness – members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Personal judgement – members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for others – members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers and its other employees.

Duty to uphold the law – members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship – members should do whatever they are able to do to ensure that their authorities use their resources prudently, and in accordance with the law.

Leadership – members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.