

AGENDA

Meeting: Standards Committee

Place: Kennet Room - County Hall, Bythesea Road, Trowbridge, BA14 8JN

Date: Wednesday 25 January 2023

Time: 10.30 am

Please direct any enquiries on this Agenda to Lisa Alexander of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01722 434560 or email lisa.alexander@wiltshire.gov.uk

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Membership:

Cllr Paul Oatway QPM (Chairman)	Cllr Pip Ridout
Cllr Allison Bucknell (Vice-Chairman)	Cllr Mike Sankey
Cllr Andrew Davis	Cllr Iain Wallis
Cllr Matthew Dean	Cllr Derek Walters
Cllr Ruth Hopkinson	Kathy Barnes
Cllr Bill Parks	Joanne Cetti
Cllr Sam Pearce-Kearney	Julie Phillips
Gordon Ball	

Substitutes:

Cllr Richard Britton	Cllr Mel Jacob
Cllr Trevor Carbin	Cllr Gordon King
Cllr Ernie Clark	Cllr Kathryn Macdermid
Cllr Howard Greenman	Cllr Dr Nick Murry
Cllr Jon Hubbard	Cllr Graham Wright

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For extended details on meeting procedure, submission and scope of questions and other matters, please consult [Part 4 of the council's constitution](#).

The full constitution can be found at [this link](#).

For assistance on these and other matters please contact the officer named above for details

AGENDA

Part 1

Items to be considered when the meeting is open to the public

1 **Apologies for Absence**

2 **Minutes** (*Pages 5 - 10*)

To confirm the minutes of the meeting held on 5 October 2022 (*copy attached*).

3 **Declarations of Interest**

To receive any declarations of disclosable interests or dispensations granted by the Standards Committee.

4 **Chairman's Announcements**

5 **Public Participation**

The Council welcomes contributions from members of the public.

Statements

If you would like to make a statement at this meeting on any item on this agenda, please register to do so at least 10 minutes prior to the meeting. Up to 3 speakers are permitted to speak for up to 3 minutes each on any agenda item. Please contact the officer named on the front of the agenda for any further clarification.

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution.

Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda no later than 5pm on Wednesday 18 January 2023, in order to be guaranteed of a written response. In order to receive a verbal response questions must be submitted no later than 5pm on Friday 20 January 2023. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

Details of any questions received will be circulated to Committee members prior to the meeting and made available at the meeting and on the Council's website.

6 **Code of Conduct Complaints Status Report** (*Pages 11 - 14*)

To note the Status Report on the current position on Code of Conduct Complaints.

7 **Proposed Change to the Constitution: Part 3D Scheme of Delegation (Licensing)** *(Pages 15 - 38)*

To consider a request from the Licensing Committee.

8 **Urgent Items**

Part II

Item(s) during consideration of which it is recommended that the public should be excluded because of the likelihood that exempt information would be disclosed

Standards Committee

MINUTES OF THE STANDARDS COMMITTEE MEETING HELD ON 5 OCTOBER 2022 AT KENNET ROOM - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.

Present:

Cllr Paul Oatway QPM (Chairman), Cllr Allison Bucknell (Vice-Chairman), Cllr Andrew Davis, Cllr Ruth Hopkinson, Cllr Bill Parks, Cllr Mike Sankey, Cllr Iain Wallis and Gordon Ball (Non voting)

47 **Apologies for Absence**

Apologies for absence were received from:

- Julie Phillips (non-voting)
- Derek Walters

The Committee noted that Councillor Sam Pearce-Kearney and Councillor Pip Ridout were in attendance remotely via Teams, therefore they would not take part in any voting.

48 **Minutes**

The minutes of the meeting held on 15 June 2022 were presented for consideration.

Subject to an amendment to include Cllr Ian Wallis to the attendance, it was;

Resolved

To approve and sign the minutes as a true and correct record.

49 **Declarations of Interest**

There were no declarations.

50 **Chairman's Announcements**

Positive Conduct Campaign

As part of the council's Positive Conduct, Positive Democracy campaign to promote high standards of behaviour amongst everyone involved in local democracy in Wiltshire, a public webinar was held in June which provided guidance on avoiding and resolving conduct issues. A video of the webinar was available on the website.

In addition, a Positive Conduct toolkit had been produced, containing a range of useful resources for councillors and clerks, and a Positive Conduct Charter, which the Chairman encouraged all Wiltshire councillors to sign up to, to demonstrate their commitment to the campaign.

51 **Public Participation**

There were no questions or statements.

52 **Wiltshire Council Complaints Report 2021 - 22**

The Committee received the Annual Complaints Report which provided a detailed picture of the council's complaints activity between 1 April 2021 and 31 March 2022.

The Committee noted the gradual reduction in complaints received over the past four years had continued, as had the number of complaints handled at Stage 1 of the corporate Complaints Procedure, with those handled at Stage 2 remaining stable.

There was small increase to the percentage of complaints upheld or partially upheld by the council, with Children's Services, Development and Building Control and Adult Social Care attracting the highest numbers of complaints.

There had been a slight increase in complaints received by the Local Government Ombudsman.

A new internal IT system to process complaints was expected, as were improvements to the Complaints webpage.

The Committee discussed the possibility of including statistics on financial aspects of compensation resulting from a complaint and requested that the data be included in future reports.

Complaints registered via the My Wilts app or other email addresses across the council were dealt with separately and did not form part of the statistics within the update. The Committee agreed that it was useful for service areas to know when there was a spike in complaints about certain issues so that they could respond.

The Committee also discussed the role of Division Members in resolving complaints and how well Wiltshire performed in dealing with complaints compared to other authorities of a similar scale.

It was;

Resolved

To note:

- **The Wiltshire Council Annual Complaints Report 2021-22.**
- **That formal complaints to the council have reduced by 41% since 2018-19.**
- **The actions to further improve the council's complaints handling function over the next 12 months.**

53 Changes to Protocol 6 of the Constitution

The Committee received the report on changes to Protocol 6 of the Constitution, to the current Corporate Complaints procedure, which at present was not compliant with the Housing Ombudsman's Code.

During discussion the Committee noted that the proposed document was more user friendly and comprehensive. It was also suggested that the procedure need not sit with the constitution to reduce future changes being required.

It was;

Resolved

To note the report and:

- **To note that the current corporate Complaints Procedure is not compliant with the Housing Ombudsman's new Complaint Handling Code.**
- **To note the comments of the Constitution Focus Group and Wiltshire Council's Housing Board.**
- **To recommend to Full Council that the amended 'Protocol 6 – Complaints Procedure' as outlined under Option 1 (attached at Appendix 2) is adopted to provide compliance with the Housing Ombudsman's new Complaint Handling Code and to make the Procedure more comprehensive and user-friendly for customers.**

54 LGA Model Code of Conduct Working Group Update

The Committee noted the report of the LGA Model Code of Conduct Working Group and considered the feedback in relation to comments from the Group Leaders.

The Committee discussed the differences between the old and the new proposed Code, specifically around para 8.4 relating to imposed sanctions and noted its support the enhancement.

If approved at Full Council the new Code would then form part of Positive Conduct Campaign, where town and parish councils would be encouraged to consider adopting it themselves.

Following discussion, it was;

Resolved

To note the report and recommend the Code of Conduct provided at Appendix A be adopted by Full Council.

55 **Status Report on Code of Conduct Complaints**

The Committee received the status report, updating on the number and outcome of Code of Conduct complaints received since the last meeting on 15 June 2022 and providing a summary of the complaints considered by the Assessment Sub Committee

There had been 9 Code of Conduct Complaints received by the Monitoring Officer during that period. Of these, 2 were determined No Further Action (NFA) by the Monitoring Officer, 2 were determined NFA by the Assessment Sub Committee, 1 was dismissed and the remaining 4 were due to be assessed by the Assessment Sub-Committee at its next scheduled meeting.

A chart showing Code of Conduct complaints received since 2019 was also included in the report.

A table of current cases had been provided to the Chairman on 10 August 2022 for a dip sample of cases to be undertaken to enable oversight.

After a discussion, it was,

Resolved:

To note the position on Code of Conduct Complaints.

56 **Appointment of an Independent Person**

The Committee noted the report as set out in the agenda.

A recruitment process to fill the vacant Independent Person position had taken place. A total of nine candidates had been interviewed and the panel had unanimously agreed on one candidate.

The Committee supported the recommendation that Full Council to appoint Mr McAllister to the position of Independent Person.

Resolved:

To Recommend that Council ratify the appointment of an Independent Persons following the selection process undertaken by the Standards Committee

57 **Urgent Items**

There were no urgent items.

(Duration of meeting: 2.30 - 3.20 pm)

The Officer who has produced these minutes is Lisa Alexander of Democratic Services, direct line 01722 434560, e-mail lisa.alexander@wiltshire.gov.uk

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Wiltshire Council

Standards Committee

25 January 2023

Code of Conduct Complaints – Status Report

Purpose

1. To provide an update on the Code of Conduct complaints received by the council since the Committee's last meeting.

Statutory background

2. All local authorities are required, by s.28 Localism Act 2011, to adopt a code of conduct for their members. All such codes are required to cover the following:
 - The principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership
 - The registration and disclosure of pecuniary and other interests.
3. Wiltshire Council, as a principal authority, is required to have in place arrangements for investigating and determining allegations that a member of the Council, or a member of a town or parish council within the council area, has failed to comply with the relevant code of conduct.

Council Code of Conduct procedures

4. Wiltshire Council's arrangements for considering complaints about alleged code of conduct breaches are set out in Protocol 11 to the Constitution, the procedure having changed with effect from 1 January 2020.
5. On receipt of such a complaint the Monitoring Officer will consider the complaint and, if appropriate, prepare a report for the Assessment Sub-Committee (ASC). The Monitoring Officer (MO) may at this point decide not to take any further action on a complaint where, on the available information, it appears to be trivial, vexatious, malicious, politically motivated or 'tit for tat', and it would not be in the public interest, including particularly the efficient use of resources, to proceed.
6. Valid code of conduct complaints are determined by the Assessment Sub-Committee, following receipt of the report from the Monitoring Officer. The Assessment Sub-Committee may conclude that no further action should be taken, it may refer the complaint for investigation, or it may recommend that an alternative resolution be explored with the parties.
7. If the Assessment Sub-Committee determines that a formal investigation should be undertaken, an Investigating Officer is appointed by the Monitoring Officer. If the recommendation of the Investigating Officer is that there has been a substantial

breach of the Code of Conduct, and that alternative resolution is not appropriate, then the Monitoring Officer, after consultation with the Independent Person, will refer the matter to a Standards Hearing Sub-Committee.

8. The Standards Hearing Sub-Committee will conduct a hearing into the complaint to determine whether there has been a breach of the Code and, if so, what sanctions, if any, should be applied to the Subject Member (the councillor who is the subject of the complaint). If the Subject Member is a member of a town or parish council, the Hearing Sub-Committee's decision regarding sanctions will be in the form of a recommendation to the relevant council.
9. There is no right of appeal of the decision of the Assessment Sub-Committee or the Hearing Sub-Committee.
10. The Standards Committee has oversight of the operation of the procedures for dealing with Code of Conduct complaints as well as a general responsibility to promote and maintain high standards of conduct by elected and co-opted members and officers.

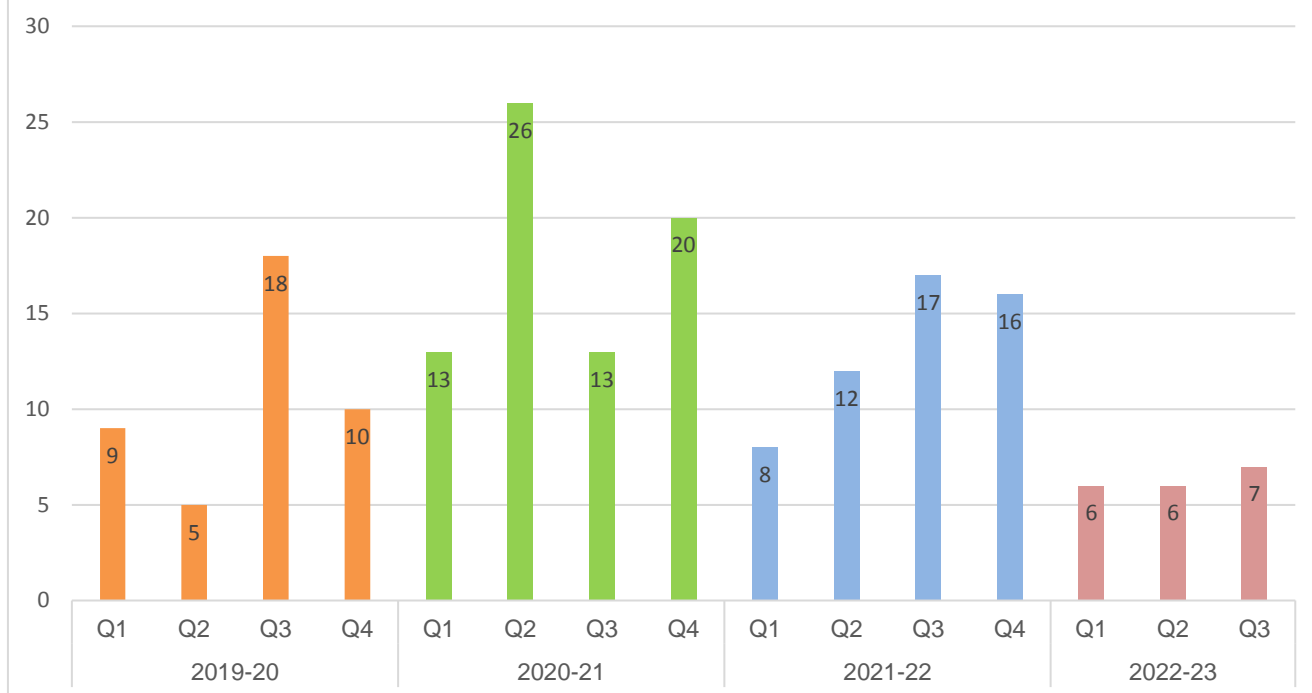
Summary of committee meetings

11. The last Standards Committee meeting took place on 5 October 2022. Since that meeting there have been:
 - 3 meetings of the Standards Assessment Sub-Committee;
 - 0 meetings of the Standards Hearing Sub-Committee.
12. The next meeting of the Standards Assessment Sub-Committee is scheduled for 9 February 2023.

Summary of complaints received since 27 September 2022 (following publication of the 5 October 2022 meeting agenda)

13. Between 27 September 2022 and 17 January 2023, the Monitoring Officer received **7 complaints** under codes of conduct:
 - 6 were determined No Further Action by Assessment Sub-Committee;
 - 1 was dismissed as 'out of time' by the Monitoring Officer.
14. The Monitoring Officer can also determine No Further Action under paragraph 4.6 of Protocol 11 – Arrangements for dealing with Code of Conduct Complaints. This is applied where the Monitoring Officer determines that, on the information available, the complaint appears to be trivial, vexatious, malicious, politically motivated or 'tit for tat', and it would not be in the public interest for further action to be taken, including particularly the efficient use of resources.
15. **Chart 1** shows the code of conduct complaints received since 2019:

Chart 1 - Code of Conduct complaints received 2019-22



Quarterly average: 11
2019-20 total: 42

Quarterly average: 18
2020-21 total: 72

Quarterly average: 13
2021-22 total: 52

Quarterly average: 6
2022-23 total so far: 19

Types of complaint

14. The 9 code of conduct complaints received between 27 September 2022 and 17 January 2023 can be broken down as follows:

(NFA = No Further Action MO = Monitoring Officer ASC = Assessment Sub-Committee)

- 0 were complaints against **Wiltshire Councillors**:
- 0 were against **town councillors**:
- 7 were against **parish councillors***:
 - 1 was regarding insulting remarks (NFA by ASC)
 - 2 were regarding conflicts of interest (1 x NFA; 1 x referred for Investigation)
 - 2 were regarding threatening behaviour (NFA by ASC)
 - 2 were regarding bullying, disrespect, integrity and use of council resources (NFA by ASC)
 - 1 was regarding meeting chairing (NFA by ASC)

* NB. Some complaints involve multiple issues and are therefore listed more than once.

Complaint resolution speed

16. Under Protocol 11 – Arrangements for Dealing with Code of Conduct Complaints, the

council aims to assess all such complaints within **5 working days** of receiving the subject member's response. This is a challenging target as complaints can be complex, require legal input and include a large amount of background information that must be reviewed.

17. During this period, **1 complaint** was assessed by or on behalf of the Monitoring Officer, within **5 working days**.
18. Complaints referred to Assessment Sub-Committee cannot usually meet the 5 working day timescale for assessment due to the need for a scheduled meeting. However, the council endeavours to inform complainants and subject members that the complaint will be assessed in this way, and of the meeting date, as quickly as possible. During the period reported, **6 complaints** have been assessed by the Assessment Sub-Committee, with the parties informed of the Assessment Sub-Committee meeting date after an average of **3 working days** from the Subject Member's response being received.
19. 4 of the complaints assessed by Assessment Sub-Committee were considered at the next scheduled meeting after the Subject Member's response was received (taking into account the required notice period regarding agenda publication). For the other 2, these were deferred to the subsequent meeting at the request of the complainant.
20. 1 complaint was referred for investigation during this period. The investigation is ongoing and is currently within the completion timescale set out in Protocol 11 (45 working days).

Dip Sampling

15. A table of current cases was provided to the Chairman of Standards Committee on 6 December 2022 and 11 January 2023 for a dip sample to be undertaken to enable oversight.

Proposal

16. The Committee are asked to note the current position on code of conduct Complaints

Perry Holmes, Director of Legal & Governance and Monitoring Officer

Report Author: Henry Powell, Democracy and Complaints Manager,
complaints@wiltshire.gov.uk

Appendices

None.

Wiltshire Council

Standards Committee

25 January 2023

Proposed Changes to the Constitution – Part 3D4: Scheme of Delegation (Licensing)

Purpose of Report

1. This report asks the Standards Committee to consider a proposed change to Part 3D4 of the Constitution.
2. The proposal is a minor change to the scheme of delegation in respect of licensing.

Background

3. The Standards Committee has responsibility for oversight of the Council's constitution and making recommendations to Council.
4. The Licensing Committee deals with all of the council's responsibilities under the Licensing Act 2003 and Gambling Act 2005 and any other associated matters that naturally fall within the jurisdiction of the committee where legislation permits.

Main Considerations

5. As Licensing Authority the council operates a procedure for film classification where films do not already have a film classification from the British Board of Film Classification (BBFC). At present this requires members of the Licensing Committee viewing those films, and has been undertaken via a Sub-Committee.
6. At its meeting on 5 December 2022 the Licensing Committee agreed to amend its procedures, first to introduce fees charging for this process in line with other Licensing Authorities, and second to revise the licensing delegation arrangements in respect of Film Classification.
7. Under the revised process Part 3D4 of the Constitution would be amended to delegate classification and reclassification of films to officers, with an appeals to be heard by a Sub-Committee. The proposed amendments are shown in **Appendix 1**.
8. Although only a minor procedural change, this would be a constitutional amendment, so the Standards Committee is invited to make any comment it considers appropriate.
9. The report to Licensing Committee has been included for information at **Appendix 2**.

Overview and Scrutiny Engagement

10. Not applicable.

Safeguarding Implications

11. There are no safeguarding implications.

Public Health Implications

12. There are no public health implications.

Procurement Implications

13. There are no procurement implications at present.

Equalities Impact of the Proposal

14. There are no equalities implications.

Environmental and Climate Change Considerations

15. There are no environmental or climate change implications.

Risks that may arise if the proposed decision and related work is not taken

16. If the change is not approved there would continue to be unnecessary administrative and procedural delays in classifying and reclassifying films.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

17. No risks have been identified.

Finance Implications

18. There are no financial implications arising from this report. Any introduction of fees as recommended by the Licensing Committee would be considered by Full Council, and is separate to the procedural changes.

Legal Implications

19. There are no legal implications.

Workforce Implications

20. There are no workforce implications.

Conclusions

21. The change proposed is a minor procedural amendment, brought to the Standards Committee only because of its general remit having oversight of any constitutional changes.

Proposal

22. To recommend Full Council approve the changes to Part 3D4 as set out at Appendix 1.

Perry Holmes – Director, Legal and Governance

Report Author: Kieran Elliott, Democracy Manager (Democratic Services)

Appendix 1 – Proposed Changes to Part 3D4

Appendix 2 – Report to Licensing 5 December 2022

Background Papers

None

Appendix 1 – Part 3: Responsibilities for Functions

Addition at Part 3B new Para 8

Local Authority Panels

Channel Panel

8.1 The Channel Panel uses a multi-agency approach to protecting people vulnerable to being drawn into terrorism. The Channel Panel was established in line with the Counter-Terrorism and Security Act 2015.

8.2 The Channel Panel forms part of the council's Prevent Duty. The Cabinet Member with responsibility for Public Protection attends meetings of the Prevent Board.

8.2 The Channel Panel is required to:

8.2.1 Identify individuals at risk

8.2.2 Assess the nature and extent of that risk;

8.2.3 Develop the most appropriate support plan for the individuals concerned.

8.3 The key requirements of the Channel Panel:

8.3.1. The local authority is the Channel Panel Chair;

8.3.2. Membership of the panel must include the local authority and the police as they have principal responsibility for Channel in their area;

8.3.3. Minimum membership of the panel includes:

- The local authority representative, as chair (Public Health Principal for Vulnerable Communities)
- Public Health Practitioner for Prevent and Safer Communities
- Counter Terrorism Policing South West Prevent Officer
- Safeguarding representation (as determined by the age of the case)
- Mental Health representation if mental health concerns are present (service dependant on age of case)
- Minute taker (Public Health)

Additional members from agencies relevant to the case are requested which could include education providers, voluntary community groups, or probation services or others as appropriate.

8.3.4. The panel to develop a support plan for individuals accepted as channel cases.

8.3.5. The panel to consider alternative forms of support, including health and social services, where Channel is not appropriate.

8.3.6. The panel to ensure that the council's functions to safeguard and promote the welfare of children under section 11 of the Children Act 2004 are discharged;

8.3.7. All partners of a panel, so far as appropriate and reasonably practicable, to cooperate with the police and the panel in the carrying out of their functions;

8.3.8. Each case is handled separately; people deemed appropriate to receive support will have a tailored package developed for them, according to their identified vulnerabilities.

8.3.9. Where the panel is unable to make a unanimous decision, the question must be decided by a majority of the panel. Where the panel is unable to make a majority decision, the question must be decided by the Channel Panel Chair. In certain circumstances the Chair may wish to escalate the question internally through the agreed governance route.

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PART 3 SECTION D4 SCHEME OF DELEGATION SPECIFIC TO LICENSING

Licensing Act 2003: Table of Delegations of Licensing Functions

Matter to be dealt with	Full Committee	Sub-Committee	Officers
Application for personal licence with unspent convictions		If a police Objection	If no objection made
Consideration of Personal Licence following notification of relevant convictions		If representation received from Police or Licencing Authority	
Application for premises licence/club premises certificate		If a relevant representation made	If no relevant representation made or if representation made and all parties subsequently agree on a revised application.
Application for provisional statement		If a relevant representation made	If no relevant representation made or if representation made and all parties subsequently agree on a revised application
Application to vary premises licence/club registration certificate		If a relevant representation made	If no relevant representation made or if representation made and all parties subsequently agree on a revised application
Application to vary designated personal licence holder		If a police Objection	All other cases

Appendix 1

Request to be removed as designated personal licence holder			All cases
Application for transfer of a premises licence		If a police Objection	All other cases
Application for interim authorities		If a police Objection	All other cases

Application to review premises licence / club premises registration		All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious, etc			All cases
Decision to object when local authority is a consultee and not the lead authority		All cases	
Determination of a representation to a temporary event notice		All cases	
Determination of Film Classification requests		Appeal against officer decision	All cases initially

Gambling Act 2005: Table of Delegations of Licensing Functions

Matter to be dealt with	Full Council	Licensing Committee or Sub-Committee	Officers
Three year licensing policy	X		
Policy not to permit casinos	X		
Fee setting – when appropriate	X		
Application for premises licences		Where representations have been received and not withdrawn	Where no representations received/ representations have been withdrawn
Application for a variation to a licence		Where representations have been received and not withdrawn	Where no representations received/ representations have been withdrawn
Application for a transfer of a licence		Where representations have been received from the Commission	Where no representations received from the commission
Application for a provisional statement		Where representations have been received and not withdrawn	Where no representations received/ representations have been withdrawn
Review of a premises licence		X	
Application for club gaming/club machine permits		Where representations have been received and not withdrawn	Where no representations received/ representations have been withdrawn
Cancellation of club gaming/club machine permits		X	
Applications for other permits			X

Appendix 1

Cancellation of licensed premises gaming machine permits			X
Consideration of temporary use notice			X
Decision to give a counter notice to a temporary use notice		X	
Determination as to whether a person is an interested party			X
Determination as to whether representations are relevant			X
Determination as whether a representation is frivolous, vexatious or repetitive			X

Table of Delegated Functions - Miscellaneous

Matter to be dealt with	Licensing Committee	Sub-Committee	Officers
Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 (as required by the sex establishments policy)	The Licensing Committee or Sub Committee will determine any application	The Licensing Committee or Sub Committee will determine any application	To determine Renewals where no objections have been received
Schedule 4 Local Government (Miscellaneous Provisions) Act 1982 (Consent street trading)	The Licensing Committee or Sub Committee will determine applications where refusal has been recommended by officers, and subsequent representations have been received from the applicant	The Licensing Committee or Sub Committee will determine applications where refusal has been recommended by officers, and subsequent representations have been received from the applicant	In all other cases
<p>Powers to grant licences and permits under the following legislation:</p> <p>Town Police Clauses Act 1847 as amended Sections 47, 57, 58, 60 and 79 of Local Government (Miscellaneous Provisions) Act 1976 (Hackney carriages)</p> <p>Section 13 – 17 Local Government (Miscellaneous Provisions) Act 1982 (acupuncture, tattooing, ear Piercing and electrolysis)</p> <p>Zoo Licensing Act 1981</p> <p>House to house collections Act 1939</p>	<p>For all these functions there is no role for the committee as there is a statutory right of appeal to the Magistrates' Court</p> <p>The Licensing Committee will determine any application made by an officer or Member of the Council.</p>	For all these functions there is no role for the sub - committee as there is a statutory right of appeal to the Magistrates' Court	In all other cases

Appendix 1

Dangerous Wild Animals Act 1976			
Lotteries and Amusements Act 1976			
Hypnotism Act 1952 (as amended) and Schedule 3 Local Government (Miscellaneous Provisions) Act 1982			
The Animal Welfare (Licensing of activities involving animals) (England) Regulations 2018			All other cases Appeals to Head of Service or Licensing Manager

Criminal Justice and Police Act 2001 and Violent Crime Reduction Act 2006

Table of Delegations of Licensing Functions

Matter to Be Dealt With	Full Council	Licensing Committee or Sub-Committee	Officers (Corporate Director Place)
Making Designated Public Places Orders (DPPOs)		X	

Film Classification: Amendment to Procedure & New Fees and Charges

Summary

The Licensing Authority already operates its own film classification procedure where films do not already have a film classification from the British Board of Film Classification (BBFC), but this involves members of the Licensing Committee viewing the films.

Historically we have not charged for this process but officers are aware that other Licensing Authorities do make a charge for providing a film classification.

The Licensing Authority proposes to introduce a fee scheme run on a cost recovery basis and as a result is not intended to impact upon community-run events.

The fees charged will cover the costs associated with the film classification process.

To amend the procedure for classification of films for showing in Wiltshire.

Proposal(s)

To amend the current procedures for classification of films in Wiltshire, by revising the delegation to officers and to introduce a fee structure for film classifications.

Reason for Proposal

By introducing a fee for the classification of films, the Licensing Team is proposing to recover reasonable costs to cover the classification process.

To streamline the current process for film classification and reduce the burden on Members and Officers and reduce the time taken to process a request for a classification.

This is proposed as the practicality of classifying films can be more effectively dealt with by Officers.

Sarah Valdus

Assistant Director - Environment

Film Classification Amendment to Procedure and New Fees and Charges

Purpose of Report

- 1.1 For Members to consider a charging regime in relation to the classification of films by Wiltshire Council.
- 1.2 To review the Film Classification procedure and implement an associated fee structure.
- 1.3 It is also proposed to introduce appropriate deadlines when applying for a film classification. The Licensing Authority proposes that film classifications are received at least 6 weeks before the date of a film screening for individual film classification requests, and at least 8 weeks before the date of any film festival. Any late submissions will only be considered on a case-by-case basis. However, it is likely that late requests will be refused based upon the impact it will cause on the workload of the Licensing Team.

Relevance to the Council's Business Plan

- 2.1 The policy helps the Council to meet the policy objectives of delivering a cost-effective regime, customer focused services, and working towards safe and healthier local communities.

Main Considerations for the Council

- 3.1 The Licensing Authority can be required to classify previously unclassified films, consider appeals by distributors against BBFC's decisions or determine requests to reclassify films. The Council's responsibilities in relation to film classification are now incorporated in the Licensing Act 2003. It is necessary for the Licensing Committee to have a procedure to deal with these matters.

Background

- 4.1 Wiltshire Council is the classification body for the public exhibition of films shown within its area, by virtue of the Licensing Act 2003 (the Act). As such the Council has the right to classify films that are shown in premises such as cinemas, hotels, clubs public houses and community premises.
- 4.2 Sections 20 and 74 of the Act provide that a mandatory condition shall be applied to all premises licences and club premises that authorise the exhibition of films. This relates to the restriction of the admission of children (defined as 'persons aged under 18')
- 4.3 Premises must restrict the admission of children to the exhibition of any film to either the film classification recommended by the BBFC, or to such classification recommended by Wiltshire Council.

Current position

- 5.1 Members will be aware that on 2nd September 2019, Wiltshire Council adopted a procedure to be followed when issuing a certificate to a film.
- 5.2 Since this time, a number of films and film festivals have received classifications issued by this Authority.
- 5.3 The current process for correctly issuing a classification is a lengthy one, involving significant resources and time and currently with no fee charged for this work.
- 5.4 Wiltshire Council is entitled to charge a fee which is appropriate to recover the costs of any activity associated with the film classification function, and Members are therefore asked to consider adopting a suitable fee.
- 5.5 In order to carry out a thorough classification, the time taken to undertake a film classification function is often double the length of the film.
- 5.6 Currently film classification requests are carried out by a Licensing Sub-Committee supported by a number of relevant officers.

Amendment to Procedure

- 6.1 Following a review of the process it would appear more effective to bring film classification in line with other licensing processes. With all other licensing applications there is a delegation to officer level so that the officers deal with the more straight forward matters. Should the matter be more complex, only then, will the matter be submitted to the sub-committee for determination.
- 6.2 At the Licensing Committee meeting on 17th October 2022 members views were sought on whether a change to the procedure would be appropriate and if delegation to Officers would be supported. Following the feedback received the proposal is to amend the procedures to reflect this.
- 6.3 Members are asked to consider amendments to the current procedures to delegate any applications received by Wiltshire Council for Film classification or reclassification to the Licensing Manager and / or Licensing Officers.
- 6.4 This is recommended for consideration by Members as the practicality of classifying films can be more effectively dealt with by Officers. It should be noted there is currently no legal right of appeal for film classification decisions and a challenge to a film classification can only be made by an application to judicially review the decision.

Fees

- 7.1 The BBFC charges a fee for the classification of films. The standard fee is a £500 per film, a discount of 50% is provided to UK registered charities
- 7.2 Commercial releases will be submitted to the BBFC as a matter of course, and therefore submissions to local authorities usually originate from local students and arts groups.

7.3 **New proposed process** - Two officers will view the film and reach an agreement on the appropriate certification of the film.

The current hourly rate for the Licensing Manager is £67

The current hourly rate for a Licensing Officer is £45.

Fee for Film classification per Film:

- The proposal is to charge £100 for first hour plus £20 for each additional 15 minutes or apart thereof.
- The administrative fee per single film will be £25

1 hour film = £100 + £25 = £125

1 hour 20 minute film = £100 + £40 + £25 = £165

Fees for Film Classification for Film Festivals:

- Film festivals (1 - 25) films £110 first hour plus £20 for each 15 minutes or part thereof + one off £35 admin (charge to cover all films viewed in one siting)

Film festival with 10 short length films = 90 minutes = £110 + £40 + £35 = £185

- Film festivals (25-50) films £130 first hour plus £20 for each 15 minutes or part thereof + one off £35 admin (charge to cover all films viewed in one siting)

Film festival with 31 short length films = 310 minutes = £130 + £300 + £35 = £465

7.4 Fees have been proposed following consideration of other local authority charges to ensure that they are reasonable and proportionate to the work involved. These will be reviewed on an annual basis as part of the budget setting process. See **Appendix 2** for other Local Authority charges.

7.5 The proposed fee is lower than that charged by the BBFC which is appropriate given the nature of the films that will be submitted to the Council, to encourage local film making talent. These films are generally low budget and would have a limited release.

Safeguarding Implications

None

Public Health Implications

None

Environmental and Climate Change Considerations

None

Corporate Procurement Implications

None

Equalities Impact of the Proposal

None

Risk Assessment

13.1. The correct classification of films will prevent them being viewed by inappropriate audiences, and there are no significant risks arising from amendment to the procedure and adoption of fees.

Risks that may arise if the proposed decision and related work is not taken

14.1. There are no particular risk identified from any of the proposals.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

15.1. There are no identified risks from any of the proposals.

Financial Implications

16.1 There is a cost to the Council to deal with any film classification requests, the fees proposed will recover this cost.

Legal Implications

17.1 There is no right of appeal when a decision to classify a film is made by the Council, but any decision could be the subject of a judicial review which would result in the Council incurring legal fees to defend the review and further costs which the Council would seek to recover if the judicial review was unsuccessful. In the event of a successful review the Council may also be ordered to pay the applicants costs. This risk is considered to be reduced by having in place a film classification procedure following the BBFC guidance and ensuring that classification decisions are made in line with the Licensing Act 2003, the Revised Guidance 2018 issued under s.182 of the Licensing Act 2003 and the Council's Licensing Policy 2019 - 2024.

Options Considered

18.1 To implement no change and hence no cost recovery which would mean incurring cost to the authority on each discretionary request.

18.2 To stop offering the discretionary service to local businesses when certification is required signposting them to the BBFC service only.

- 18.3 For consideration of an appeal process by way of a Licensing Sub Committee Hearing following Officers decision but there would be no legal right of appeal.

Conclusions

- 19.1 Any amendments to the procedures agreed by Members will come into immediate effect regarding the classification of films by the Council
- 19.2 Any fees agreed by Members will come into effect from 1st April 2023.

Proposal

- 20.1 Agree and adopt the amendments to the procedure.
- 20.2 Approve the delegation to the Licensing Manager and / or Licensing Officers the classification or reclassification of films, this is recommended as the practicality of classifying films in accordance with the procedure can be more effectively dealt with by Officers.
- 20.3 That Part 3, Section D of the Scheme of Delegation specific to Licensing Act 2003 in terms of reference of the Licensing function, be amended as follows: To determine film classification restrictions where there has been no classification by the British Board of Film Classification, be delegated to Officers. **See Appendix 3.**
- 20.4 Members consider and agree the proposed fees in respect of film classifications carried out by Wiltshire Council.
- 20.5 Recommend to Council that proposed fees plus associated cost or such other fee and associated costs as considered appropriate be approved .

Reason for Proposal

- 21.1 To recover costs of Officers time involved in rating films but support local businesses by offering a discretionary service at rate lower than that of the equivalent BBFC service.
- 21.2 To reduce the burden on Members and Officers by streamlining the process for Film Classification and ensure an effective service for applicants.

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November 2022

Background Papers

Licensing Act 2003
The BBFC Guidance

Appendices

Appendix 1 - Revised Film Classification Procedure

Appendix 2 - Film Classification fees other Local Authorities

Appendix 3 - Revised scheme of delegation

PROCEDURE FOR THE CLASSIFICATION OF FILMS

1. Occasionally Wiltshire Council receives requests from local cinemas, film producers and /or distributors to show small production unclassified films that due to their small-scale production and limited distribution will not go through the BBFC system. To be screened within the Council area, these films must be presented to the Council's licensing authority so that a classification can be awarded before they can be shown to the public.
2. Such requests will require an undertaking from the applicant that they have satisfied themselves after proper enquiry that no matter to be exhibited contravenes the current interpretation of the Obscene Publications Acts 1959, and 1964 the Copyright Design and Patents Act 1988 or any other relevant legislation and has not been created through the commission of a criminal offence. The licensing authority shall not be liable for any material that has been created through the commission of a criminal offence.
3. The licensing authority can also be requested to classify films that have already been classified by the BBFC under the following circumstances:
 - (a) Where at least three members of the Council give notice to the Head of Public Protection of their wish to call-in a film for classification by the licensing authority; or
 - (b) Where a distributor of a film appeals a decision of the BBFC and requests that the licensing authority classifies the film.
4. Any request to classify a film under the circumstances referred to in paragraphs 1 or 2 above shall be referred to and determined by Officers on behalf of the licensing authority.
5. Any request to classify a film made under paragraph 3(a) above must be accompanied by reasons for calling-in the film. Such requests will be dealt with as expeditiously as possible bearing in mind that films are generally only shown in cinemas for relatively short periods.
6. All requests submitted under the circumstances referred to in paragraphs 1 and 3(b) must:
 - (a) be accompanied by a synopsis of the film and a full copy of the film in DVD format and all films should include English subtitles or provide an English script in order for members to determine the classification; and
 - (b) give a minimum of 6 weeks before the date of a film screening for individual film classification requests, and at least 8 weeks before the date of any film festival. Any late submissions will be considered on a case-by-case basis. However, it is likely that requests will be refused based upon the impact it will cause on the workload of the Licensing Service

7. A report containing a brief synopsis of the film(s) and other relevant information will be completed. The Officers will view the entire film, assess it against the latest BBFC Guidance, and issue the appropriate classification. When considering classification requests, the Officers must do so with a view to promoting the relevant licensing objective(s).
8. The distributor and/or the party requesting the classification together with the premise's licence/club premises certificate holders of all relevant premises licensed for the exhibition of films will be notified of the Officers decision in writing, which will include reasons for the decision.
9. There is no right of appeal only a review of the decision by way of a judicial review.

The British Board of Film Classification (BBFC) is the independent regulator of the film and the video industry in the UK. All films that have been classified by the BBFC are given a rating.

The Universal Film Classifications are: **Uc | U | PG | 12A | 12 | 15 | 18 | R18**



Uc and U Classification

It is impossible to predict what might upset any particular child. But a 'U' film should be suitable for audiences aged four years and over. U films should be set within a positive moral framework and should offer reassuring counterbalances to any violence, threat or horror.

Videos classified 'Uc' are particularly suitable for pre-school children and normally raise no issues of concern.

'PG' Parental Guidance Classification

Suitable for general viewing, but some scenes may be unsuitable for young children

Unaccompanied children of any age may watch. A 'PG' film should not disturb a child

aged around eight or older. However, parents are advised to consider whether the content may upset younger or more sensitive children.

12A Classification

Suitable for 12 years and over. No-one younger than 12 may see a '12A' film in a cinema unless accompanied by an adult. No-one younger than 12 may rent or buy a '12' rated video or DVD. Responsibility for allowing under-12s to view lies with the accompanying or supervising adult.

'15' Classification

Suitable only for 15 years and over. No-one younger than 15 may see a '15' film in a cinema. No-one younger than 15 may rent or buy a '15' rated video or DVD.

'18' Classification

Suitable only for adults. No-one younger than 18 may see an '18' film in a cinema. No-one younger than 18 may rent or buy an '18' rated video.

'R18' Classification

Films rated R18 are to be shown only in specially licensed cinemas, or supplied only in licensed sex shops, and to adults of not less than 18 years.

The 'R18' category is a special and legally restricted classification primarily for explicit works of consenting sex between adults. Films may only be shown to adults in specially licensed cinemas, and videos may be supplied to adults only in licensed sex shops. 'R18' videos may not be supplied by mail order.

Film Classification decision by Officers

On receipt of an application and fee for a film classification a worksheet will be created on M3.

**The Council's Licensing
Officer**



The film applicant



**PRIVATE FILM (S)
Viewing /
&
Deliberation**



**Officers announce their
decision**



**Officers send film(s)
certification to applicant**

The Licensing Officer will complete Film classification form completing the relevant information prior to viewing film

The Officers may contact the applicant for more information or / and invite to come to the office prior to the viewing. The film applicant or the person representing him/her will be invited to address the officers.

The Officers will view the film(s) and deliberate in order to make their decision, any other person's present will be asked to leave the room.

If applicant wishes they may return or arrive in time for the decision. In all cases the decision will be sent to the applicant in writing within 5 days.

M3 updated, certification and Film classification form saved onto worksheet.

Film Classification fees other Local Authorities

Authority	Per film	Minutes	Other
Merton	<ul style="list-style-type: none"> Fee per film issue - report and certification £97 Fee per film for two viewing officers £164 		
City of Westminster	Standard film £96.00 Film festival (1 to 25 films) £120.00 Film festival (26 to 50 films) £144.00 Film festival (51 or more films) £168.00 Foreign language feature film with subtitles £96.00	£1.60 per minute – all	
Royal Borough of Greenwich	Standard Film £53.10 Foreign Language Film £66.38	£1.77 per minute all	£0.80 per minute
Tunbridge wells	Film £75 per hour		
Mendip	Film £51 per hour for each officer	£25.50 admin	
West Devon	Per film £103 Per film festival £515.00		
Barnet	Per film £80		
Oxford	£8.00 per 15 minutes	£8.00 for certificate	
Southwark	Up to 30 minutes £50 Additional 20 minute film duration £23.00		
Chelmsford	Per film £180		
Tower hamlets	£37 processing fee plus £25 per hour or part hereof.		
Bedford	Per film £75	Plus £1 per minute	
Leeds	£50 per 30 minutes	Each additional 20 minutes £23	
Barnet	£80 per film		
South Derbyshire	£50 admin and first half and hour of viewing	£20 for every additional half and hour or part thereof	