



## Licensing and Safety Committee – 18 September 2024

### Hearing Protocol (Licensing Act 2003)

#### 1. Purpose

- 1.1 To inform the Licensing and Safety Committee of recent case law which confirmed that remote hearings via video conferencing were permissible within the legislative framework; and accordingly
- 1.2 To seek approval to adopt a protocol for conducting remote hearings under the Licensing Act 2003.

#### 2. Recommendations

That the protocol for conducting remote hearings under the Licensing Act 2003, attached appendix 1 to this report, be adopted.

#### 3. Background information

- 3.1 In the case *Walk Safe Security Services Ltd v London Borough of Lewisham [2024] EWHC 1787 (Admin)*, the High Court considered the legality of conducting remote hearings under the Licensing Act 2003 and the Licensing Act (Hearings) Regulations 2005. Essentially, it confirmed that remote hearings via video conferencing were permissible within the legislative framework.
- 3.2 In making this judgment, the following definitions and interpretations were determined:
  - **Interpretation of "Hearing" and "Meeting"**: the terms "hearing" and "meeting" as used in the relevant statutes can encompass both in-person and remote formats. This interpretation aligns with the flexibility observed in other judicial and administrative contexts where remote hearings are also considered valid.

- **Definition of "Place":** The court found that the legislative context does not strictly define "place" as a physical location. Consequently, an online platform can be regarded as a "place" for the purposes of conducting hearings, thus supporting the legitimacy of remote proceedings.
- **Distinguishing Previous Cases:** The decision distinguished previous cases that mandated in-person meetings, noting that those decisions were based on different statutory frameworks. This distinction underscored the specific applicability of remote hearings under the Licensing Act
- **Administrative vs. Judicial Functions:** The court highlighted that while licensing functions are administrative, they share similarities with judicial proceedings. Since courts and tribunals have conducted remote hearings effectively, licensing authorities can similarly adopt remote formats
- **Section 9 (3) of the Licensing Act 2003:** Confers the right of a Licensing Committee to regulate its own procedure, which would include the right to decide how a Hearing is held; i.e. in person, remotely or hybrid (the judge described this as '*Maximum Procedure Flexibility*').

3.3 These findings collectively affirm that licensing authorities can legally conduct remote hearings, a practice that gained prominence during and post the COVID-19 pandemic. The judgment provides clarity and a legal basis for the continued use of remote technology in administrative hearings.

#### 4. Resource considerations

##### Financial:

4.1 There are no financial implications.

##### Legal:

4.2 In considering the adoption of a protocol:

- The Procedure or Protocol to be followed when utilising remote / hybrid Hearings must be '*fair*' to all parties, including member of the public.
- The Licensing and Safety Committee can agree such a protocol itself which would part of the agenda paperwork for each Hearing.
- The following six areas should be addressed:
  - 1) How Hearings will normally be held as a default rule i.e. in-person, remotely or hybrid. However, the Authority must remain open to accommodating the wishes of the parties involved, including criteria the Committee might take into account when deciding how the Hearing will be held.

- 2) What constitutes valid attendance by a member at the Hearing. As a minimum, all Members must be able to hear the proceedings and be heard by others. It would be preferable that they are also seen. The Democratic Services Officer will need to monitor to ensure that drop-outs do not occur. If they do, the Hearing should be paused whilst the Member or party rejoins. A dial in connection over the phone would be permissible. If a Member misses a substantial amount of the Hearing, it will be for the Member in question to decide if they need to recuse themselves. If they missed a brief moment, a quick recap of what was missed will suffice. If there is a dispute, the Chair should make a final ruling on the matter.
- 3) The need to be mindful of the parties attending (those who have made relevant representations) and that they are able to attend by the agreed method, as they have the right to attend and be heard.
- 4) The public will also need access to the Hearing, unless it is taking place in private session.
- 5) Provision for the Committee to be able to deliberate in private (via a separate meeting link or break out room) Or end the meeting and communicate the decision within 5 working days.
- 6) Disorderly conduct. The Chair needs to be able to manage the meeting and advise that anyone displaying disorderly conduct will be removed from the meeting.

4.3 This protocol applies to hearings conducted by the Licensing Sub-committee to determine licensing applications under the Licensing Act, 2003 and does not apply to apply to Taxi Licensing meetings as they are governed by separate legislation under the Local Government (Miscellaneous Provisions) Act 1976 or Licensing and Safety Committee which was established under the Local Government Act 1972.

5. **Staffing:** None

6. **Citizen impact:** The protocol reflects the need for meetings to be conducted in a manner which is fair to all parties including members of the public.

7. **Community safety:** None

8. **Environmental impact:** None

9. **Performance and risk management issues:** None

**10. Equality implications:** As Paragraph 6 above.

**11. Consultation:** The Council's Legal and Licensing Services have been consulted. The protocol has been produced in line with guidance and accords with protocols adopted by other local authorities nationally.

**Background papers**

Guidance.

**Appendix:** Draft Hearing Protocol.

## **APPENDIX – DRAFT HEARING PROTOCOL**

### **Hearing protocol (Licensing Act 2003)**

This protocol sets out the arrangements for conducting Licensing Sub-Committee Hearings under the Licensing Act 2003 (referred to as the *Act*) and Licensing Act 2003 (Hearings) Regulations 2005 (referred to as the *Regulations*) remotely. It aims to ensure that the hearings are fair, transparent and accessible for all participants.

#### **1.0 Definition of Terms**

##### **Licensing Hearing**

This refers to hearings which are held under the Licensing Act 2003 only.

##### **Party/parties**

This refers to the applicant, the license holder, any engaged agent or legal representative, and other persons in support or objecting.

##### **Remote hearing**

This refers to hearing in which all participants join via Microsoft Teams.

##### **Hybrid hearing**

This refers meeting in which some participants are in person and others are attending remotely.

#### **2.0 Attendance at Hearings**

- 2.1 The default position of the Council is to continue to hold Hearings in person for all parties.
- 2.2 When Members of the Licensing and Safety Committee are invited to share their availability for an upcoming hearing by Democratic Services, they will be invited to confirm whether they are available to attend in person and/or remotely.
- 2.3 The Democratic Services Officer will, where possible, avoid a hearing in which some Members attend in person and others attend remotely. The default position being that all members should be physically in attendance (including hybrid meetings), unless there is an exceptional circumstance, which could result in the hearing not being quorate. In these circumstances a member(s) may attend remotely.
- 2.4 All parties will be able to request to attend a meeting remotely via the Notice of Hearing form. However, this should be for exceptional reasons and the form will encourage parties to attend in person, where possible.

- 2.5 If some parties wish to join remotely then a hybrid hearing shall be held.
- 2.6 If, due to members availability to attend in person, a remote hearing has been arranged and a party requests to attend in person, the Democratic Services Office will arrange for the party to attend the Council House where the means to join the hearing remotely will be facilitated.

### **3.0 The following principles apply to remote and hybrid hearings:**

- 3.1 The Licensing Authority will use Microsoft Teams as the platform for remote hearings. Attendance using a device with internet connection, microphone and camera is strongly preferred.
- 3.2 The Licensing Authority via Democratic Services will send an invitation link and instructions (in the form of a brief guide) on how to join the hearing to all participants at least five days before a licensing hearing and at least two days before hearings considering Temporary Event Notices. Democratic Services will also provide technical advice.
- 3.3 Only those who have made accepted representations under the Licensing Act 2003 will be sent an invite to the meeting.
- 3.4 All participants must ensure that they:-
- are in a quiet and private location during the hearing;
  - minimise any background noise or distraction;
  - ensure that they are respectful and courteous to each other; and
  - follow the directions of the Chair at all times.
- 3.5 All participants must also:
- mute their microphones when they are not speaking;
  - use the "raise hand" function or indicate verbally if they wish to speak;
  - turn on their cameras when they are speaking, unless there are exceptional circumstances that prevent them from doing so.
- 3.6 The Chair may ask any participant to turn on their camera or mute their microphone if necessary.
- 3.7 The Democratic Service Officer, with approval of the Chair and sub-committee may mute participants microphones if they disrupt the hearing. In extreme circumstances, with agreement of the Sub-Committee, the Democratic Services Officer may eject a participant from the hearing under section 25 of the *Regulations*.
- 3.8 Should the meeting enter into private session, all participants must refrain from recording or broadcasting the hearing or taking screenshots or photographs of the hearing. The Hearing held in public session will be livestreamed on the Councils website and the recording will be made available.

- 3.9 If there are any technical difficulties or interruptions during the hearing, the Chair may adjourn the hearing for a short period to resolve the issue or reconvene the hearing at a later date or time. The Chair will inform all participants of the reason and the duration of any adjournment or reconvening, and the arrangements for resuming the hearing.
- 3.10 The Democratic Services Officer will routinely monitor the meeting for connection issues and will inform the Chair of problems as they occur.
- 3.11 Should a Sub-Committee member be absent for any part of the proceedings due to a connection issue, it shall be a matter for that member, upon rejoining the meeting to decide if it's appropriate to continue to participate. All parties will be asked if they object to that member proceeding and in case of a dispute regarding fairness, the Chair has the final say. If the member continues, they shall receive an update on the elements missed by the Chair and/or parties present.
- 3.12 If there are persistent technical issues for any attendee, they can request through the Chair that they be able to dial into the meeting using a phone. As a minimum, all Members and participants must be able to hear the proceedings and be heard by others.
- 3.13 The Sub-Committee will deliberate in private after hearing from all the parties. In the case of remote meetings, the Democratic Services Officer will set up a 'Break out room' for Members. The Sub-Committee will then announce its decision and the reasons for it at the end of the hearing, or as soon as possible thereafter in writing.
- 3.14 The Sub-Committee will provide a written notice of its decision and the reasons for it to all parties within five working\* days of the hearing.  
\*a working day is when the Council House is open for business.

#### **4.0 Licensing and Safety Committee, and Taxi Licensing Sub-Committees**

This protocol only applies to Licensing Sub-Committee held under the Licensing Act 2003 and does not apply to the Licensing and Safety Committee and/or the Taxi Licensing Sub-Committees. Councillors must therefore be present in person at these meetings in order to take part in proceedings.

#### **5.0 Review**

This protocol is subject to review and amendment by the Licensing Authority in light of any changes in the law, guidance or circumstances.

***Insert date approved by committee***