

## LICENSING ENFORCEMENT POLICY

### Authorisation of Officers

1. Authorisation of officers is of paramount importance in the effective delivery of licensing functions. The officer having delegated responsibility to authorise enforcement officers is the Head of Public Experience
2. All authorisations of Enforcement Officers are in writing, specifying the limits of authorisation. This forms part of the identification cards which can be shown during visits/inspections if necessary.

### Decision Making, Consistency and Transparency

3. Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends. The Council recognises the importance of achieving and maintaining consistency in its approach to making all decisions that concern enforcement action, including prosecution. To achieve this, the guidance given in Codes of Practice, Local Authorities Coordinators of Regulatory Services (LACORS) circulars and other advisory documents will always be considered.
4. In practice consistency is not a simple matter. Enforcement Officers are faced with many variables: these include the severity of the risk/hazard, the attitude and competence of management, the licensees/permit holders compliance history. Decisions on enforcement action are discretionary, involving judgment by the officer. The Council has arrangements in place to promote consistency in the exercise of discretion, and these include liaison arrangements with the other enforcing authorities.
5. Elected Members will decide in general policy terms what attitude the Council will take to serious breaches of the law relating to licensing matters. Having determined this policy, Members will not thereafter be involved in detailed consideration of individual cases other than in exceptional circumstances or where a licence may be considered for revocation, suspension or refusal.
6. The decision to revoke, suspend or refuse a licence is made by the Licensing Committee or one of its Sub-Committees acting under delegated powers. The Committee or its Sub-Committees will also determine all other applications where there are relevant representations or where a licence is reviewed following representations, a conviction for failing to comply with licence conditions or convictions which bring into question their fitness to be licensed as Hackney Carriage/Private Hire Drivers/Operators.
7. The decision whether to prosecute is delegated to the Head of Public Experience in consultation with the Chairman of the Licensing Committee or failing him the Vice-Chairman. That decision will be based on the legislation and statutory Codes of Practice.
8. Certain types of formal enforcement action, excluding prosecution, are delegated to the Licensing Officer.

9. All regulatory activities by the Licensing Section will be carried out in a way which is transparent, accountable, proportionate and consistent. Activities will, so far as possible, be targeted only at cases in which action is needed.
10. The Council will expect relevant good practice to be followed.
11. The Licensing Section will base all enforcement decisions on:
  - the severity and scale of the actual or potential harm arising from an incident
  - the seriousness of any potential breach of the law
  - the effect of the legislative breach upon the potential persons affected
  - the future consequences of failing to address the breach at the present time
  - the track record of the licence holder or the business
  - the enforcement priorities with both local and national authorities
  - the practicality of achieving results
  - the wider relevance of the incident including serious public concern
  - any concurrent or potential action by other services and agencies and the suitability and effect of our action as opposed to combined with theirs in addressing the issues.
12. The Licensing Section will have due regard to the advice given in statutory Codes of Practice, strategic plans and guidance including:
  - the Regulator's Compliance Code (Department for Business, Innovation and Skills, Better Regulation Delivery Office, Regulators Code April 2014).
  - the Central and Local Government Concordat on Good Enforcement (usually known as the Enforcement Concordat) where not superseded by the Regulator's Compliance Code
  - advice from LACORS
  - advice and guidance on licensing matters from the Home Office and the Department for Culture, Media and Sport (DCMS)
  - advice from the Gambling Commission

and other relevant Government and professional bodies and to following appropriate national strategies.
13. The Council will use discretion in deciding the level of response to incidents or complaints. In accordance with maintaining a proportionate response, most resources available for the investigation of incidents will be devoted to the more serious events.
14. In relation to taxis and private hire operators and drivers, the Council operates a three stage warning system to deal with infringements of its licensing conditions. The system provides stepped enforcement for those licence holders who have contravened licence conditions or associated legal provisions and is administered by the Head of Public Experience. Where three warnings are issued to a driver during a six month period they are required to attend a meeting of the Council's Licensing (General Purposes) Sub-Committee. Having listened to all relevant parties the Sub-Committee will then determine what action, if any, should be taken which might include suspension or revocation of the relevant licence.
15. Transparency means helping licence/permit holders to understand what is expected of them and what they should expect from regulators. It also means making clear to licence/permit holders not only what they have to do but, where this is relevant, what they do not. Officers will always distinguish between statutory requirements and advice or guidance about what is desirable but not compulsory.
16. Transparency also involves officers keeping all relevant parties informed. These arrangements have regard to legal constraints and requirements.

17. Officers will explain what to expect when they call and what the complaint procedure is. In particular when officers offer information or advice, face to face or in writing, including any warning, they will explain what has to be done to comply with the law, and explain why. If asked, officers will confirm any advice in writing and distinguish legal requirements from best practice advice.

### **Supporting Economic Progress**

18. The Licensing Section will consider the impact of its interventions and ensure that the burden on 'regulated entities' i.e. businesses, is the minimum compatible with achieving the regulatory objective.

### **Risk Assessment**

19. Legislation makes some duties specific and absolute. Others require action so far as is reasonably practicable. Deciding what is reasonably practicable to control risks involves the exercise of judgment. In the final analysis, it is the courts that determine what is reasonably practicable in a particular case. Where licensees/permit holders must control risks so far as reasonably practicable, the Council will, when considering protective measures taken by them, take account of the degree of risk on the one hand, and on the other the cost, whether in money, time or trouble, involved in the measures necessary to avert the risk. Unless it can be shown that there is a gross disproportion between these factors and that the risk is insignificant in relation to the cost, the licensee/permit holder must take measures and incur costs to reduce the risk.
20. The Licensing Section has a system for prioritising inspections according to the risks posed by a licensee/permit holder's operations, which takes account of the hazards and the nature and extent of the risks that arise. We will ensure that our efforts are targeted on businesses where they are most needed and will apply a risk-based approach across all licensing functions.
21. Enforcement powers are only employed as a means to an end. Action will generally follow a hierarchy of alternatives unless urgent intervention is required.

### **Advice and Guidance**

22. The Licensing Section will help and encourage businesses to understand and meet regulatory requirements more easily but this does not relieve regulated entities of their responsibility to comply with their obligations under the law.
23. The Licensing Section is committed to providing general advice for businesses and individuals in an effort to bring about improved standards and places great emphasis on providing clear guidance, information and advice so as to encourage compliance with the legislation. The Council's web site is employed extensively to disseminate up to date information.

### **Inspections**

24. It is neither possible nor necessary for the Council to investigate all issues of non compliance with the law that are uncovered in the course of planned inspections or reported events.
25. The Licensing Section will ensure that regulatory effort is focussed on those businesses where non-compliance is likely and impact is high.
26. Joint working with other agencies including the Police, Security Industry Authority (SIA), Trading Standards and Vehicle and Operator Service Agency (VOSA) is already in place.
27. Whenever an enforcement decision needs to be made fair regard shall be given to the normal hours of trading of any business under investigation. When necessary, inspections and investigations will be carried out in the early morning, in the evening and at weekends, in order to obtain fair and representative evidence pertaining to the alleged breach(s).

28. Prior notification of an impending enforcement inspection will not be made where such notification would defeat the purpose for which the inspection was being undertaken.
29. In conducting investigations the Council will take account of any likely complimentary or shared enforcement roles, e.g. vehicle inspections with VOSA. We will also refer relevant information to other Regulators where there is a wider regulatory interest.

### **Information Requirements**

30. Information requirements on businesses will be weighed against the costs and benefits of providing it and the Licensing Section will seek to share this data to avoid duplication.

### **Compliance and Enforcement Actions**

31. The Licensing Section will adopt positive incentives, such as a light touch or reduced data requirements. Action will be taken where appropriate but there will be discussion with the business first unless immediate action is warranted or delay would defeat the object of the enforcement action. Targeted inspection programmes mean that effort is focussed in the worst performing businesses and that those which remain broadly compliant already receive a lighter touch.

### **Accountability**

32. The Licensing Section has put in place effective consultation opportunities for businesses to provide feedback including the use of NI 182 which measures business satisfaction with regulatory services. The Council also provides an effective corporate complaints procedure.

### **Informal Action**

33. Informal action will be appropriate in the following circumstances:
  - the consequences of non-compliance will not pose a significant risk to members of the public who may visit the premises or use a licensed vehicle
  - the act or omission is not serious enough to warrant formal action,
  - from the past history of the individual, enterprise or licence/permit holder it can be reasonably expected that informal action will achieve compliance, and
  - confidence in the individual or licence/permit holder, or in the management of the enterprise, is high.
34. Even where some of the above criteria are not met there may be circumstances in which informal action will be more effective than the formal approach. This may apply to businesses and enterprises associated with voluntary organisations using volunteers where no one is employed to work.
35. When informal action is taken to secure compliance Officers will ensure that written documentation is provided that:
  - contains all the information necessary to understand what action is required, why it is necessary and the timescale for compliance
  - offers the opportunity for discussion or for the individual or proprietor to make representations, including contact point(s) and name(s)
  - indicates the statute or regulation contravened, measures which will enable compliance with the legal requirements and that other means of achieving the same effect may be chosen
  - provides the details of any other Council services or outside Agencies that may be able to provide assistance or related services
  - clearly indicates that any recommendations of good practice are not legal requirements.

## **Statutory and Other Notices issued under Licensing Legislation**

36. Only Officers who are duly authorised by the Head of Public Experience, Head of Legal Services and Monitoring Officer may issue (i.e. sign) Statutory Notices.
37. Authorised Officers must have personally witnessed the matter or issue concerned, be satisfied that it is significant and that any other appropriate criteria are met before issuing or requesting any Notice. The Head of Public Experience may issue certain Statutory Notices on the recommendation of Authorised Officers where the latter are not personally authorised to do so.
38. Unless specifically specified in legislation Authorised Officers shall endeavour to obtain the agreement of the licence/permit holder regarding the placing of time limits on Notices, having taken due account of the risk. Authorised Officers will always discuss the works or other matters required with the licence/permit holder, if possible resolve points of difference and fully consider alternative solutions.
39. When issuing a Statutory Notice the Authorised Officer will provide information about the right of appeal.
40. Failure to comply with a Statutory Notice will generally result in legal proceedings and/or work in default where appropriate and permitted.

## **Formal Warning**

41. The following conditions will be met before a Formal Warning is administered:
  - there must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction, and
  - the suspected offender must admit the offence either verbally or in writing (there must be a record). A Formal Warning will not be appropriate where a person has not made a clear and reliable admission of the offence (for example where intent is denied or there are doubts about the person's mental health or intellectual capacity or where it is likely that the person could avail themselves of the provisions of a statutory defence), and
  - it is in the public interest to use a Formal Warning as the appropriate means of disposal, and
  - the suspected offender must understand the significance of a Formal Warning and give consent to being cautioned.
42. The significance of a Formal Warning is that a note to the effect that a Formal Warning was administered will be placed on the relevant documents held as part of the Council's records.
43. If all the above requirements are met, the Officer will always consider whether the offence makes it appropriate for disposal by a Formal Warning but where a suspect is under 18, a Formal Warning will not be given.
44. Where a person declines the offer of a Formal Warning the suspect will be advised that the Council has the discretion to proceed with the matter by way of legal proceedings.
45. Simple Cautions may be appropriate for individuals and corporate bodies. They will be used only in accordance with the relevant government guidance.

46. When considering the disposal of a matter by way of a Formal Warning the Council will have regard to any aggravating or mitigating factors involved in the commissions of the offence and determine which factors may be most appropriate in the local circumstances.
47. The views of the victim, if any, will be taken into account and the proposal to offer a Formal Warning explained, though the fact that a victim declines to support a prosecution will not preclude the consideration of a Simple Caution. The final decision is at the discretion of the Council. The victim will be kept informed of the final outcome.
48. The suspect's criminal record will be checked to avoid inappropriate use of a Simple Caution. In particular, the Home, Lead or Originating Authority will be contacted for this purpose. If the suspect has previously received a Caution, then a further Formal Warning will not normally be considered unless the matter is trivial or unrelated.
49. The Formal Warning may be administered by post or in person. The suspect will be given adequate time to decide whether to accept, including the opportunity to seek independent legal advice.

### **Prosecution and/or Default Action**

50. Where circumstances have been identified which may warrant a prosecution, all evidence and information will be considered to enable a consistent, proportionate and objective decision to be made.
51. A decision to prosecute will be made by the Head of Public Experience in consultation with the Chairman or failing him the Vice-Chairman of the Licensing Committee in any of the following circumstances and at the earliest opportunity:
  - where the alleged offence involves a reckless disregard of the law such that safety or well-being of the public has or is being put at risk
  - where death was a result of a breach of the legislation
  - where the gravity of the alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender, warrants it
  - the alleged offence involves a failure by the suspected offender to correct an identified serious potential risk having been given a reasonable opportunity to comply with the lawful requirements of an Authorised Officer
  - a Formal Warning has been offered but rejected
  - the alleged offence involves the failure to comply in full or in part with the requirements of a Statutory Notice
  - there is a history of similar offences of persistent poor compliance
  - there has been a failure to comply with a written informal warning
  - Authorised Officers have been intentionally obstructed or assaulted in the lawful course and pursuit of their duties. This includes refusing to provide name and address when requested by an Authorised Officer.
52. The Head of Public Experience will also consider prosecution where, following an investigation or other regulatory contact, the following circumstances apply:
  - false information has been wilfully supplied or there has been intent to deceive
  - there have been serious failures by the management of the business or organisation
  - it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law and conviction may deter others from similar failures to comply with the law.

53. When considering the decision to prosecute, Officers will also have regard to relevant Codes of Practice and guidance from the appropriate national regulators and consider the following factors:
- a) the seriousness of the alleged offence, e.g.
    - the risk or harm to the public
    - failure to comply with a Statutory Notice served for a significant breach of legislation
    - deliberate disregard for financial reward
  - b) the previous history of the party concerned, including:
    - offences following a history of similar offences
    - failure to respond positively to past warnings
    - failure to comply with Statutory Notices
  - c) the competence of any important witnesses and their willingness to co-operate.
  - d) the willingness of the party to prevent a recurrence of the problem.
  - e) the probable public benefit of a prosecution and the importance of the case, e.g. whether it might establish legal precedent or address a high incidence of similar offences in the area. Advice on the public interest is contained in the Code for Crown Prosecutors. The general advice is that the more grave the offence, the less likelihood there will be that the public interest will allow anything other than prosecution.
  - f) whether any other action, such as issuing a Formal Warning or a Notice or imposing Prohibition, would be more appropriate or effective. It is possible in exceptional circumstances to prosecute as well as issue a notice and failure to comply a notice would be an additional offence.
  - g) Any explanation offered by the company or the suspected offender. Suspected offenders will always be given the opportunity to offer an explanation before prosecution decisions are taken.
  - h) Where applicable, the likelihood of the defendant being able to establish a 'due diligence' or 'best practicable means' defence. Where appropriate, reference will be made to case law and guidance issued by LACORS, etc.
54. Before a prosecution proceeds, the Head of Public Experience will ensure that they are satisfied that there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person or company. There must be a realistic prospect of conviction; a bare prima facie case will not be enough. Where there is insufficient evidence to prosecute, other types of formal action, such as Simple Cautioning, are not alternatives.
55. Additionally, the Council will actively consider the management chain and the role played by individual directors and managers. Where appropriate we will seek disqualification of directors under the Company Directors Disqualification Act 1986.
56. Where circumstances warrant it and the evidence to support a case is available the Council will prosecute without prior warning or recourse to alternative sanctions.

## **Licensed Premises**

57. Licensing Act 2003: The Licensing Authority is required to promote the following objectives in relation to premises and people licensed under the Act:
- preventing crime and disorder
  - protecting public safety
  - preventing nuisance
  - protecting children from harm
58. Tendring District Council acting as the Licensing Authority recognises the interest of both citizens and businesses and will work closely, with partners, to assist licence holders to comply with the law and the four licensing objectives it seeks to promote. However, proportionate but firm action will be taken against those who commit serious offences or consistently break the law.
59. The Tendring District Enforcement Protocol formalises the working agreement between the Licensing Authority, Essex Police, Fire and Rescue Service, Essex County Council Trading Standards Department, Northeast Essex Clinical Commissioning Group and Essex County Council Children's Safeguarding Service in respect of licensing compliance. This includes the nomination of liaison officers, disclosure arrangements, provision of advice, complaint investigation, review of licences, etc.
60. The Protocol sets out the roles and responsibilities of the various enforcement agencies. It promotes the targeting of agreed problem and high risk premises which require greater attention, while providing a lighter touch in respect of low risk premises which are well run.
61. Gambling Licensing: The Head of Public Experience or Head of Legal Services and Monitoring Officer is the appropriate person to initiate any enforcement action to be taken under the Gambling Act 2005 with regard to Premises Licences and Gaming/Gaming Machine Permits. Any other enforcement action is the responsibility of the Gambling Commission.

## **Referral to Another Agency**

62. Where any matter is found to fall more appropriately under the enforcement regime of another regulatory body or agency, e.g. the Police Authority, the case will be referred to that agency by the Council. In all cases of referred enforcement the person(s) under investigation will be notified in writing by the Council of the reasons for referral.

## **Revisits to Premises**

63. Following service of a Statutory Notice or a written informal warning and/or advice, officers will revisit the premises, etc to check that compliance has been achieved. For very minor contraventions officers may advise that a check will be carried out at the next routine inspection. The decision on whether a follow-up visit is necessary will be based upon the seriousness of the non-compliance and the likelihood that further formal action will be taken as a direct result of the visit. Where practicable, the officer who undertook the original visit or inspection will carry out the revisit if there are significant breaches of legislation.

## **Enforcement at Premises in which the Council has an interest**

64. The Council will not take action against itself and where such action may prove necessary the matter will be passed to the Head of Public Experience for referral to the appropriate national enforcement authority, etc.
65. Where Council-owned premises are operated by a contractor or other occupier the Council shall retain responsibility for enforcement. Under these circumstances the Council will apply its enforcement policy and procedures in exactly the same way as it does in all other premises at which it has the enforcement responsibility.

### **PACE Interviews – Police and Criminal Evidence Act 1984**

66. Questioning of licence/permit holders and other persons will be carried out as a formal interview where there is suspected involvement in criminal offences. All interviews shall be conducted with regard to the above Act and associated Codes of Practice.

### **Human Rights Act 1998**

67. Regard shall be had to the Human Rights Act 1998 when applying this Policy.

### **Equality and Diversity**

68. Full regard will be taken of the Council's Equality and Diversity policies when applying the Licensing Enforcement Policy.