

Tendring District Council



LICENSING ENFORCEMENT POLICY

Adopted by Full Council as Policy on ***** 2019

Review date ***** 2024

This Licensing Enforcement Policy replaces the existing Policy and will be the basis for all Licensing enforcement decisions taken by the Council over the next five years. It was adopted by Full Council on ***** 2019 and came into effect on ***** 2019. A review of the Policy will take place in ***** 2024.

Tendring District Council is situated in the County of Essex, which comprises twelve District and Borough Councils and two Unitary Authorities.

The District forms a rural peninsular bounded by the Stour Estuary to the North, the Colne Estuary to the South and the North Sea to the East. As at 2016 the population stood at an estimated 143,400 who live in well-established towns, the largest of which is Clacton on Sea; however many residents occupy the rural hinterland in the District's many thriving villages and hamlets.

Tendring is well known for having one of the longest coastlines and the sunniest, driest weather of any District in the county. Tourism thrives in the District with many former visitors choosing to settle here and with tourism being a main source of income for the District.

The District benefits from a good rail and road infrastructure and is within easy reach of London Stansted Airport. The District boasts no fewer than fourteen railway stations, with London Liverpool Street being just one hour away from the mainline station at Manningtree. There are also excellent links to the continent via Harwich International Port.

Authorisation of Officers

1. Authorisation of Officers is of paramount importance in the effective delivery of licensing functions in accordance with the Council's Constitution. The Officer having delegated responsibility to authorise Enforcement Officers is the Corporate Director.
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. The Council recognises the importance of achieving and maintaining consistency in its approach to making all decisions that concern enforcement action, including prosecution. Consistency of approach means taking a similar approach in similar circumstances to achieve similar results; it does not necessarily mean uniformity. To achieve this, the guidance given in Codes of Practice, LGA support for regulatory services, Government guidance, circulars and other advisory documents will always be considered.
4. Enforcement Officers are faced with many variables; these include the severity of the risk/hazard, the attitude and competence of management of areas that are licensed and the licensee's/permit holder's compliance history. The Council has arrangements in place to promote consistency in the exercise of discretion, and these include liaison with 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 suspension, revocation or refusal.

6. The decision to suspend, revoke or refuse a licence is made by the Licensing and Registration 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 as to whether to prosecute is delegated to the Corporate Director after consultation with the Legal and Governance Department, with notice to the Chair of the Licensing and Registration Committee or failing that the Vice-Chair. That decision will be based on the legislation and statutory Codes of Practice along with the CPS Codes of Practice.
8. Certain types of formal enforcement action, excluding prosecution, are delegated to the Licensing Manager and Licensing Officer.
9. All regulatory activities by the Licensing Section will be conducted in a way that 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
 - With regard to the Corporate Enforcement Policy
 - 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 Regulators' Code (Department for Business, Innovation and Skills, Better Regulation Delivery Office, Regulators' Code Apr 2014).
 - The Central and Local Government Concordat on Good Enforcement (Enforcement Concordat) where not superseded by the Regulators' Compliance Code)
 - Advice from Local Authorities Coordinators of Regulatory Services (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 follow 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 Hackney Carriage/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 Corporate Director. Where three warnings are issued to a driver over a six month period they are required to attend a meeting of the Council's Miscellaneous Licensing 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 as appropriate or as reasonable. These arrangements have regard to legal constraints, requirements and the procedural remit of this Authority.
17. Officers will explain what to expect when they call and what the complaint procedure is for matters received that require an investigation. 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 judgement. 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 risks.
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 structured tier 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, Fire and Rescue Service, Security Industry Authority (SIA), Trading Standards and Driver and Vehicle Standards Agency (DVSA) 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(es).
28. Prior notification of an impending enforcement inspection will not be made when 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 DVSA. We will also refer relevant information to other Regulators where there is a wider regulatory interest.
30. Various surveillance platforms may be used, including the internet and social media, as a general observation duty with regard to legislative functions and this may include publicly accessible areas of the internet and social media.

Information Requirements

31. 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

32. 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.

Accountability

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

Informal Action

34. Informal action will be appropriate in the following circumstances:
- The consequence 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
35. 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.
36. When informal action is taken to secure compliance, Officers will ensure 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 points and names
 - 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

37. Only Officers who are duly authorised by the Corporate Director or the Head of Governance and Legal Services and Council's Monitoring Officer, may issue (i.e. sign) Statutory Notices.
38. 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 Corporate Director may issue certain Statutory Notices on the

recommendation of Authorised Officers where the latter are not personally authorised to do so.

39. Unless 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.
40. When issuing a Statutory Notice the Authorised Officer will provide information about the right of appeal.
41. Failure to comply with a Statutory Notice will generally result in legal proceedings and/or work in default where appropriate and permitted.

Formal Warning

42. The following conditions will be met before a Formal Warning is administered:
 - There must be evidence of the suspected offender's guilt sufficient enough 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
43. 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 and held for as long as the warning and incident is relevant.
44. 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.
45. 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.
46. Simple Cautions may be appropriate for individuals and corporate bodies. They will be used only in accordance with the relevant Government guidance.
47. When considering the disposal of a matter by way of Formal Warning the Council will have regard to any aggravating or mitigating factors involved in the commission of the offence and determine which factors may be most appropriate in the local circumstances.
48. 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.

49. 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.
50. 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

51. 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.
52. A decision to prosecute is delegated to the Corporate Director after consultation with the Legal and Governance Department, with notice to the Chairperson or in their absence the Vice-Chairperson of the Licensing and Registration Committee; the decision being based on the legislation and statutory Codes of Practice and the CPS Code for Prosecutors, 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 is being put at risk
 - Where death was a result of breach of the legislation
 - Where the gravity of the alleged offence, taken together with the seriousness of any actual or, 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.
53. The Corporate Director after consultation with the Legal and Governance Department, 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.
54. 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.
 - Harm or the risk of 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 test is contained in the Code for Crown Prosecutors. The general advice is that the more grave the offence, the more likely that it will be in the public interest for prosecution to be pursued.
 - 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 with 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 to regulatory bodies.
55. Before a prosecution proceeds the Corporate Director, in consultation with the Authority's Legal and Governance Department; 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. The Legal and Governance Department and Corporate Director must deem there to be a realistic prospect of conviction, a bare prima facie case will not be sufficient.
56. Additionally, the Council will actively consider the management chain and the role played by individual Directors and Managers of areas licensed by this Authority. Where appropriate, the Council will seek disqualification of Directors under the Company Directors Disqualification Act 1986.
57. 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

58. Licensing Act 2003 (the Act): The Licensing Authority is required to promote the following four (4) objectives in relation to premises and people under the Act:
- The prevention of crime and disorder
 - Public safety

- The prevention of public nuisance
 - The protection of children from harm
59. Tendring District Council, acting as the Licensing Authority, recognises the interest of both citizens and businesses and will work closely, along with partners, to assist licence holders to comply with the law and the four licensing objectives that it seeks to promote. However, proportionate but firm action will be taken against those who commit serious offences or consistently break the law.
60. The Tendring District Corporate Enforcement Strategy formalises the working agreement between the Licensing Authority, Essex Police, Essex Fire and Rescue Service, Essex County Council Trading Standards, North East Essex Clinical Commissioning Group and Essex County Council Children's Safeguarding Service in respect of licensing compliance. This includes for example the nomination of liaison officers, disclosure agreements, provision of advice, complaint investigation, review of licences etc.
61. The Enforcement Strategy 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.
62. Gambling Licensing: The Corporate Director or Head of Governance and Legal Services (and Council's Monitoring Officer) or Senior Solicitor (Litigation and Governance), 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

63. Where any matter is found to fall more appropriately under the enforcement regime of another regulatory body or agency, then 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 (if appropriate and not prejudicial to any enforcement action) in writing by the Council stating the reasons for referral.

Revisits to Premises

64. Following service of a Statutory Notice or a written informal warning and/or advice, Officers will revisit the premises, 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 re-visit if there are any significant breaches of legislation.

Enforcement at Premises in which the Council has an interest

65. The Council will not take action against itself and where such action may prove necessary the matter will be passed to the Corporate Director, for referral to the appropriate national enforcement authority.

66. Where Council owned premises are operated by a contractor or other occupier then 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.

Police and Criminal Evidence Act 1984 – PACE interviews

67. 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

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

Equality and Diversity and the Equality Act 2010

69. Full regard will be taken of the Council's Equality and Diversity policies when applying the Licensing Enforcement Policy and in considering any matter or making any decision the Council will have due regard to the Equality Act 2010 including the public sector equality duty (PSED) at section 149 of the Equality Act 2010.