

A.4 APPENDIX

Tendring District Council



LICENSING ENFORCEMENT AND INSPECTION POLICY

Adopted by Cabinet on XXXX

Tendring District Council: www.tendringdc.gov.uk

Introduction

A purpose of licensing is the protection of the public. In order to achieve this, legislation requires licences, permits or registrations to be obtained. These are normally subject to certain conditions.

The effectiveness of legislation and licence conditions in protecting the public depends crucially on persons complying with such legislation and conditions.

The purpose of this policy is to set out what licensees and others can expect from principles and policies which deal with any enforcement and inspection undertaken by the Licensing Section. A review of this policy will take place every five years.

In order to achieve compliance the Licensing Committee and its Officer will assist licensees to meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who break the law or act irresponsibly.

This policy document is provided for the guidance of Members, Officers, consumers and members of the public.

In making decisions about enforcement action the Council is not solely acting on behalf of an individual complainant, but is exercising a wider responsibility to further its primary aim of securing a safe environment for the public consumers and others who may be affected by the actions, inactions or omissions of licensees.

Areas of Licensing included in the Policy

The areas of licensing which are covered by this policy are as follows:

Fundraising

House to House Collections

Street Collections

Licensing Act 2003

Licences under Licensing Act 2003 for supply of alcohol, regulated entertainment and late night refreshment.

Vehicles

Taxis and Private Hire Vehicles

Taxis and Private Hire Drivers

Private Hire Operators

Other Licensing

Boats and Boatmen

Street Trading

Sex Establishment

Gambling Act 2005

Issue premises licences for gambling activities, consider notices for temporary use of premises for gambling, grant permits for gaming and gaming machines in clubs, regulate gaming and gaming

machines in alcohol licensed premises, grant permits to family entertainment centres, grant permits for prize gaming, consider occasional use notices for betting tracks and register small society lotteries.

Investigations

Inspections and investigations will be carried out in a professional and consistent manner as set out below.

Authorisations

Only Officers authorised by the Council will be responsible for undertaking investigations. Officers will only be authorised to deal with such investigations who have the knowledge to undertake such duties. Officers are issued with a personal identity card, which will be carried with them at all times and will be shown upon request.

Covert Surveillance

During an investigation into suspected non-compliance with legislation, the Council may need to undertake directed covert surveillance from time to time. This may include using remote sound or video monitoring equipment but is most likely to involve personal observation.

Targeting

Enforcement activities are targeted towards circumstances which carry high risks or where there is or could be a considerable impact as a result of the non-compliance with the licensing conditions or the general law. Enforcement activities may be targeted towards individuals who are primarily responsible for an activity, who have the greatest responsibility to ensure compliance with the law or who have been the subject of previous enforcement action. From time to time, the Council will engage in enforcement initiatives which are directed towards issues where there is a need to draw attention to the existence of legislation and its enforcement.

The Council aims to undertake a programme of inspection and enforcement on all of its licensing functions.

Each licensing function is assessed against risk and this will be taken into account in establishing the nature and the frequency of any inspection or enforcement activity. The following factors will be taken into account when determining the level of risk associated to the particular licensing function:

- The nature of the licensing function
- The history of the licensing function
- The nature and extent of complaints received by the Council
- Information received from other agencies/departments
- Safety and public protection issues

Any inspection of a licensing function undertaken by the Council which results in the exposure of issues which reveal non-compliance with a licence or its conditions will be recorded. Appropriate action will be taken in relation to any particular issue and the licensee will be given an appropriate

opportunity and time to address the issue. The licensee will be re-inspected in order to ascertain that the issue has been addressed.

Levels of Enforcement

Where informal methods have been unsuccessful, or a serious breach of a licensing condition/objective or regulation is likely to occur which may endanger the safety of the public, formal enforcement will be taken to ensure compliance with the licence. Each case will be considered on its merits. An emphasis of the Council will be the prevention of offences and further alleged offences wherever possible.

Licensees, businesses or persons generally are expected to comply with the law. The term 'enforcement' covers a wide variety of activities, including:

- Warnings
- Formal Cautions
- Hearings and Reviews
- Prosecutions

Minor breaches of licensing requirements will normally give rise to a verbal and/or written warning. More serious breaches or a continual pattern of minor breaches may involve formal cautions, hearings or reviews and even prosecutions.

In the case of the Hackney Carriage and Private Hire this may involve using the enforcement penalty points system which could lead to suspension or revocation of a licence following action by the a Licensing hearing.

In the case of the Licensing Act 2003 this may involve suspension or revocation of a licence following action by the Police or a Licensing hearing.

There are a number of enforcement options and consideration will be given to when we would take action and why we need to take action and the nature of that action. Account will be taken of breaches of legislation and where a person or company has ignored advice or guidance.

Warning

If there has been a minor incident where the law has been broken, it may be decided that the most appropriate course of action is to issue the offender with a verbal and/or written warning. Account will be taken of any previous warnings when we are considering taking formal action.

A written warning will:

- clearly state the nature of the problem and may suggest either specific remedies or a standard which is to be achieved;
- state the actions which may be followed if matters do not improve;
- designate a named officer as a point of contact;
- clearly distinguish between legal requirements and desirable standards;
- indicate any follow up action which may be taken, eg a revisit in 14 days;
- offer to work with the person(s) responsible in finding a solution, if appropriate;

- point the way to specialist advice or additional information, if appropriate;
- be firm, businesslike, unambiguous, polite and helpful.

Formal Cautions

In certain situations, the Council may consider it appropriate to issue a formal caution instead of deciding to prosecute. A formal caution should still be treated as a serious matter and will be recorded.

The issue of a formal caution may influence any future decision to prosecute and may be referred to in any future court proceedings.

Formal cautions may be used to deal with less serious offences quickly. It is unlikely that a formal caution would be given in circumstances where the offender has a history of failing to change their behaviour. When a formal caution is given, the person involved must admit the offence and accept the caution.

Hearings and Reviews

In some circumstances where licence holders have for example:

- been convicted of a relevant offence;
- refused to comply with a condition of the licence;
- behaved in a way which may render that person as unsuitable to hold a licence;
- behaved in a way which is likely to have put the public at risk; or
- appear to breach the Licensing Objectives of the Licensing Act 2003 the licence holder may be reported to the Licensing Committee to review the licence. The Committee may consider that the immediate revocation, suspension or variation of a licence may be the most appropriate course of action.

Where offenders are reported to a Committee for consideration of formal action the Council will:

- give sufficient notice of the date the matter is to be considered;
- give notice to the licence holder of the allegations against them;
- give notice to the Relevant Authorities and Interested Parties;
- provide the opportunity for the licence holder to be represented;
- provide the licence holder with the opportunity to present his/her case and provide supporting evidence;
- ensure the matter is determined in an impartial manner in accordance with the rules of natural justice;
- provide a written notice of the decision with reasons.

Prosecution

The Council will not take prosecution action until the evidence has been assessed. A prosecution will be considered when:

- it will draw attention to the need to follow the law, responsible people would expect prosecution to be appropriate, or where a conviction may deter others from offending;
- the public may have been put in danger or safety may have been compromised;

- the offence is serious;
- there is a history of failure to comply with licensing conditions;
- the evidence is sufficiently strong that the case is likely to result in a conviction;
- a prosecution would be in the public interest.

In general, the more serious the offence, the more likely it is that a prosecution will be considered necessary. The following are examples of factors which may indicate a prosecution is appropriate.

- The overall seriousness of the offence and harm caused.
- The perpetrator has encouraged others to commit offences.
- The offence was pre-meditated.
- The offender showed disregard for the law.
- The offender stood to gain from the offence.
- The victim, if any, was vulnerable, suffered damage or felt threatened by the offence.
- There is significant harm to any person or relevant issue.
- The offence had a discriminatory element, for example, on the basis of race or religion.
- The offender has previous convictions or cautions that relate to similar offences or instances.
- There is likelihood that further offences may be committed.

Human Rights Act

The Provisions of the Human Rights Act 8.1.1 Of particular importance to the Council's enforcement policy, Article 6 (the right to a fair trial) Article 8 (the right to respect for private and family life) and Protocol 1, Article 1 (Protection of property) will be considered and applied in each case. In all cases, the Council will be objective in ensuring that decisions are not influenced in any way by gender, ethnic origin, religious or political beliefs of the alleged offender.

The Council will only act in accordance with the law. The Council will act as is necessary to secure public safety, prevent crime and disorder, to protect health and well being, and to protect the rights of others.

Other Action

Each case will be decided on its merits and an informed decision made which is proportionate to the alleged offence and consistent with other similar cases. When an officer witnesses a breach in licensing legislation he/she is required to make a decision on what correct action should be taken. This could result in a verbal/written warning, formal caution or prosecution. A prosecution will have to be in the public interest. Enforcement activities will be targeted towards situations which carry higher risks to the public.

The Council can sometimes have a shared responsibility for enforcement with another enforcement agency. If this is the case, the other agency will be consulted in order to consider whether the matter should be referred to that authority.

Where the Council take the lead in deciding what enforcement action, if any, is appropriate, it will have regard to this Policy, and any other policy as adopted by the Council as a whole.

In particular the Council will take into account the following factors:

- a) the risk or harm to the public and others;
- b) whether the matter is in the public interest;
- c) the seriousness of the complaint;
- d) any explanation of the offender;
- e) whether the matter is a recurrence;
- f) whether there has been previous contravention of the legislation and/or licence conditions;
- g) the willingness of the alleged offender to prevent a recurrence of the problem;
- h) the availability of witnesses;
- i) the reliability of witnesses;
- j) the sufficiency of the evidence.

All available evidence will be evaluated before a decision on what course of action to take is chosen. This can involve the Council's legal advisers.

A joint approach with other agencies will be used when it is deemed necessary because of the nature of the particular issue and to increase the overall impact of the matter, ie joint letter (or campaign) organised by the licensing authority and police or other relevant authorities.

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