

HUNTINGDONSHIRE DISTRICT COUNCIL

LICENSING COMPLIANCE AND ENFORCEMENT POLICY STATEMENT

1. INTRODUCTION

1.1 The purpose of this policy is to express the commitment and intention of Huntingdonshire District Council to the principles of consistent and effective enforcement of legislation relating to various forms of licensing listed in Appendix A. In carrying out its functions under the Licensing Act 2003 and the Gambling Act 2005, the Council is acting as the licensing authority but for the purposes of consistency the term 'the Council' is used throughout this policy statement.

1.2 In approving this policy statement, the Council's Licensing Committee and Licensing and Protection Panel have had regard to the Concordat on Good Enforcement - the Enforcement Concordat - issued in 1998 by the Cabinet Office and the statutory Regulators' Compliance Code which came into force in 2008. The Council has also had regard to advice and guidance issued by the Local Better Regulation Office, the Local Authorities Co-ordinators of Regulatory Services (LACORS) and the Institute of Licensing.

1.3 The Council recognises that effective and well targeted regulation is essential to promote fairness and protection from harm, while being proportionate and flexible enough to encourage economic progress and vitality. This policy is therefore designed to set out the arrangements by which the principles of proportionality, consistency, transparency, helpfulness, openness and targeting of resources will be incorporated into actions.

1.4 The Council will adopt a positive and pro-active approach towards ensuring compliance by -

- helping and encouraging those subject to regulation to understand and meet the regulatory requirements more easily; and
- responding proportionately to breaches of regulation.

In certain instances, the Council may conclude that a provision in the Regulators' Compliance Code is either not relevant or outweighed by another provision. Where a decision is made to depart from the Code, it will be properly reasoned, based on material evidence and documented.

1.5 The Officers who carry out the enforcement of licensing legislation listed in Appendix A are Council employees who are authorised in writing by the Council to enforce tasks and duties in accordance with the Council's Scheme of Delegation. Officers will carry appropriate means of identification and authorisation cards.

2. STATEMENT OF INTENT

2.1 It is the Council's policy to work with businesses and their employees to -

- ◆ ensure that the risks to the public and those employed in licensed activities are properly controlled and managed so that they are reduced to the lowest level that is reasonably practicable;

- ◆ comply with all legislative requirements, while having regard to statutory codes of practice and statutory guidance.
- 2.2 In order to achieve this objective, enforcement action will be proportionate to the risk(s) perceived or the seriousness of the contravention of legislation and will be undertaken in accordance with this policy.
- 2.3 When considering the appropriate course of action to be taken following an inspection or investigation, this policy will be read in conjunction with relevant guidance issued by the Secretary of State, the Gambling Commission and other relevant bodies.
- 2.4 Officers will comply with this policy when undertaking enforcement action. They will offer an educative and advisory approach in the first instance to those responsible for complying with relevant licensing legislation but thereafter will enforce the law and compliance with licence conditions by the use of a range of enforcement options including – verbal and written warnings, use of statutory notices, formal cautions and prosecution. Prosecution will not normally constitute a punitive response to minor contraventions of licensing legislation.
- 2.5 This policy has regard to the Enforcement Concordat and the Regulators' Compliance Code. Except where there is considered to be a significant risk to public safety, departures from the guidelines contained in this policy will be exceptional and only following agreement with the Head of Democratic and Central Services or Central Services Manager of the Council.
- 2.6 All authorised Officers shall have regard to this policy when carrying out their duties in relation to the legislation listed in Appendix A.
- 2.7 Where there are issues of dual or joint enforcement with other external enforcement agencies such as Cambridgeshire Constabulary, Cambridgeshire Fire and Rescue Service and Cambridgeshire County Council Trading Standards or internally with Environmental and Community Health Services, consultation will take place with the relevant body(ies) before any enforcement action is initiated.

3. GENERAL PRINCIPLES

- 3.1 Licensing legislation is often prescriptive and subject to frequent change which limits the discretion of the Council and the licence holder.
- 3.2 The Council will endeavour to ensure compliance in full with all relevant licensing legislation listed in Appendix A. Officers will seek to offer relevant information and advice to licence holders in person as well as in writing. Officers will deal with anyone subject to this enforcement process in a courteous, fair and objective manner in accordance with the Council's corporate equalities policy.
- 3.2 Officers will assist businesses and individuals to understand legal requirements and the obligations imposed by relevant legislation. They will seek to encourage good practice and will be sensitive to the needs of business, particularly in regard to any requirements for prompt responses, transparency of action and the imposition of minimum burdens consistent with regulatory requirements.

- 3.3 Officers will also use formal enforcement measures as specified in the relevant legal provisions including the issue of statutory notices, formal cautions and by initiating prosecutions. Where there has been a serious breach of legislation or the safety of the public or employees is considered to be at risk, there will be quick and effective action as distinct from a graduated response. In considering whether this is necessary, Officers will take account of relevant guidance and will use their professional judgement to determine the extent to which public safety is considered to be endangered.
- 3.4 Where appropriate, the Council will carry out both overt and covert surveillance of individuals or organisations. In doing so, Officers will comply with any human rights legislation and have regard to any associated guidance and codes of practice in existence at the time, together with any internal policies and procedures. The Council has a covert surveillance policy under the Regulation of Investigatory Powers Act 2000 that includes a detailed procedure for authorisation and record keeping when covert surveillance is considered appropriate.
- 3.4 The Council will ensure that its Officers are suitably experienced and competent to undertake the enforcement duties that they have been authorised to carry out.
- 3.5 Within available resources, the Council will endeavour to provide suitable training and education to local businesses on a range of licensing matters designed to encourage businesses to comply with the law. This will be particularly relevant when new legislation is introduced and where an educative approach is appropriate. Documentation including guidance and standard conditions issued by the Council will be accurate and reflect current practice. In providing education and documentation, every effort will be made to provide it in languages other than English where there is shown to be a demand and resources permit.

4. PRINCIPLES OF ENFORCEMENT

- 4.1 The enforcement of the licensing legislation will be guided by the principles that are contained within the Regulators' Compliance Code and where appropriate the Enforcement Concordat. These constitute a framework for local authorities to operate in accordance with better regulation principles as follows:-

Standards

- 4.2 The Council is accountable to the local electorate for its actions and omissions. It will have clear policies and standards against which it can be judged.

Openness

- 4.3 The Council will provide information and advice in plain language on the law that it enforces and will disseminate this as widely as possible. It will also be open about how it sets about its work, including any charges that are made for specific activities. Officers will be prepared to discuss general issues, specific compliance failures or problems with businesses, their employees and representatives. Where necessary, the public registers will contain details of any notices that are served or action taken.

Helpfulness

- 4.4 The Council will work with businesses, especially small and medium sized operators and companies, to advise and assist on compliance with the legislation and licence conditions. It will provide a courteous and efficient service and Officers will encourage licence holders, businesses and the public to contact them to seek advice and information. The Council will ensure that, wherever practicable, its enforcement activities are effectively co-ordinated to minimise any unnecessary overlap or delay and where appropriate will work with other regulators to ensure an efficient service in accordance with guidance issued by The Local Better Regulation Office and the Department for Business and Skills.
- 4.5 The Council will be prepared to discuss with businesses any letters, guidance or other communication that Officers have dispatched. Requests made under the Freedom of Information and Data Protection legislation will be dealt with in accordance with the legislation and the Council's procedures.

Complaints about Service

- 4.6 The Council has adopted a feedback procedure which will be made accessible to licence holders, businesses, employees and the public. Complaints made to the Council will be dealt with initially under that procedure. Where a person remains dissatisfied with the outcome of a complaint, the Council will make available the procedure for a complaint to be made to the Local Government Ombudsman that the Council has acted with maladministration. This is without prejudice to any statutory rights of appeal that are available to a business or licence holder which will be explained in writing by the Council.

Proportionality

- 4.7 Enforcement action will be proportionate to the risk and cost involved. Action taken by the Council to ensure that activities are licensed and that licence conditions are complied with will be proportionate to the risk to public safety and to the seriousness of any breach of the legislation or relevant licensing conditions.
- 4.8 Some licensing requirements are prescribed by law with no room for discretion or individual interpretation. However others require action in line with the principles of reasonableness and the regulatory system will apply the concept of proportionality through such principles. Deciding what is reasonable or appropriate to control risks involves the exercise of judgement by businesses and, where permitted by the legislation, by regulators based on sound professional judgement. Where a licence holder and the Council cannot reach agreement, the final determination of what is reasonable in particular circumstances may ultimately be made by the courts.
- 4.9 Risk assessment will be based on all available relevant and quality data, including explicit consideration of the combined effect of the potential impact of non-compliance on regulatory outcomes and the likelihood of non-compliance. In evaluating the likelihood of non-compliance, the Council will consider all relevant factors, including past compliance records and potential future risks, the existence of good systems for managing risks, evidence of recognised external accreditation and a business's management competence and willingness to comply.

Consistency

- 4.10 Consistency of approach means taking a similar approach in similar circumstances to achieve similar ends. Licence holders will expect a consistent approach from the Council and its Officers in the advice provided, the use of powers, the determination of applications for licences, decisions on whether to prosecute and responses to incidents. In practice, Officers will be faced with many variables such as the severity of the risk to public safety, the attitude and competence of the licence holder and any previous history of non-compliance. Decisions on enforcement will be a matter of sound professional judgement based upon a risk assessment which will be exercised by the Council and its Officers.

Transparency

- 4.11 Assistance and advice will be offered to licensees to enable them to understand what is required of them by the legislation and licence conditions. It also will make clear what can be expected from the Council and the reasons why the Council and its Officers intend to or have taken a particular course of action.
- 4.12 The Council will assess the effectiveness of its information and support services by monitoring businesses' awareness and understanding of the legal requirements, including the extent to which they may have to incur external advice and costs to understand and comply with legal requirements. However there may remain a need for businesses and licence holders with particularly complex practices to use specialist or professional advisers as appropriate.
- 4.13 The Council will encourage businesses and licence holders to reasonably seek and access advice without directly triggering enforcement action. In responding to such an approach, the Council will seek primarily to provide the advice and guidance necessary to help ensure compliance.

Targeting

- 4.14 Targeting means making sure that resources are targeted primarily on those whose activities give rise to the most serious risk to licence holders, employees and the public or where hazards are least well controlled. Action will be focused on the licence holders and businesses who are responsible for the risk and who are best placed to control it.
- 4.10 The Council will prioritise inspections and visits in accordance with the risk to the public and complaints about business activities. Certain licensed or approved operations will receive more regular visits and inspections so that the Council can be satisfied that potentially high risk operations have effective public safety management arrangements in place.
- 4.11 Where formal enforcement action is necessary, it will, where appropriate, be directed against the licence holder or business responsible. Where responsibility is shared by several individuals, the Council will take action against those who can be shown to be in breach of the legislation or licence conditions.

5. SPECIFIC ENFORCEMENT ACTIVITIES

Routine Inspections

- 5.1 Under normal circumstances appointments will be made with a licensee where an inspection and visit to licensed premises is to be undertaken by an Officer. However, inspections and visits to licensed premises will also be made without prior warning where this is considered to be necessary.
- 5.2 Officers will identify themselves at the premises at the time of entry unless for operational reasons the purpose of the visit is for surveillance purposes. Officers will show their identification and their authority to enter licensed premises at the time of entry. It is an offence for any person to intentionally obstruct an authorised officer in the execution of his or her duties or refuse entry to certain licensed premises.
- 5.3 The main purpose of an inspection or visit is to ensure that licence conditions are being complied with. The Officer will state the purpose of the inspection at the start of the visit to the person in charge at that time. Inspections and visits will normally involve discussion with the licence holder or his representative. It can also include discussions with other employees at working at the premises at that time. Officers will offer to supply any copies of licence conditions or guidance notes at the time of inspection or will supply them later if requested. The conditions, notes or letters can be translated into other languages if requested and interpreters can be used if appropriate.
- 5.4 Generally, enforcement will be undertaken in a graduated approach. In the first instance, a discussion of requirements will take place with the licence holder or his representative. When considering formal enforcement, account will be taken as to whether there is also evidence of significant breaches of other licensing legislation. In the absence of other significant breaches, the Officer may consider a formal approach where
- ◆ there is a high risk to public safety; or
 - ◆ breaches would be likely to lead a more serious breach of licence conditions which would give rise to an unacceptable risk to public safety; or
 - ◆ the licensee has already failed to respond to an informal approach, or
 - ◆ there has been an act of obstruction or non-co-operation, or
 - ◆ there have been cumulative breaches of legislation.
- 5.5 Offences or breaches of a minor nature may be dealt with by way of advice, verbal warning letter or re-visit or any combination of these.

Investigations

- 5.6 The Council will respond to and, where appropriate, investigate all complaints about activities being undertaken without a licence or about a breach of licence conditions within 3 working days. The response may vary according to the nature of the allegation, its severity, the number of persons at risk and the nature of that risk and the severity of the legislative breach. The licence holder will normally be informed that a complaint has been received and the nature of that complaint. In some instances, by agreement with the complainant, it may be appropriate to release the complainant's details. However, where it is necessary to protect the identity of the complainant, e.g. where there may be a risk of intimidation or the person is an employee of the

licence holder, then the personal details of the complainant will remain confidential, unless otherwise required to be released.

- 5.7 Where a complaint is received, the licence holder will be notified as soon as reasonably practicable unless it is not appropriate to do so, e.g. it may hinder a more serious ongoing issue which is subject to a separate investigation. The investigating Officer will, where appropriate, keep the licence holder or his representative informed of the progress of the investigation. At the end of the investigation, the licence holder and interested parties will be informed of the outcome and whether any further action will be taken by the Council.

6. ENFORCEMENT OPTIONS

- 6.1 There are a number of enforcement options available to the Council where a contravention of licensing legislation or breach of licence condition has been identified. These include –

- ◆ take no action; or
- ◆ take informal action; or
- ◆ issue a formal caution; or
- ◆ suspend, revoke or refuse to renew a licence; or
- ◆ prosecute (which can be taken in addition to the service of a notice of suspension or revocation).

- 6.2 Where appropriate, a graduated approach to enforcement will be adopted and in the first instance businesses and licence holders will be given the opportunity to discuss and remedy any problems before action is taken, unless immediate action is required. In each situation the Officer will need to assess the degree of risk, the seriousness of the offence and the means of remedying the situation, together with the previous history of compliance. The decision as to which type of enforcement is appropriate will always be governed by the particular circumstances of the case.

- 6.3 In particular, the Council's sanctions and penalties will -

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and licensing issue;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by licensing non-compliance, where appropriate; and
- aim to deter future non-compliance.

No Action

- 6.4 Where an inspection or investigation reveals that at the time of the visit full compliance with the legislation and licence conditions has been achieved, no further action may be required other than record the outcome of the inspection.

Informal Action

- 6.5 Informal action may consist of any or all of the following -

- ◆ advice and offering general assistance and guidance;
- ◆ a verbal warning; and

- ◆ a letter requesting action.
- 6.6 Officers will use informal action if they believe that such a procedure will secure compliance with the requirements of the relevant Act and ancillary legislation within a timescale that is reasonable in the circumstances. If an Officer decides to use informal methods such as written advice, this should not result in a lower standard of compliance with the Act and ancillary legislation than would be achieved by more formal action.
- 6.7 While the action taken by the Officer will depend on the circumstances of the particular case, for guidance purposes only, the Council considers the following circumstances to be appropriate for informal action to be taken –
- ◆ the offence is not serious enough to warrant formal action, e.g. a minor technical offence which creates little or no risk to public safety;
 - ◆ from past history, it can reasonably be expected that informal action will achieve compliance;
 - ◆ confidence that the business management involved is high.
- 6.8 Where informal action has already been adopted in relation to the same business or licence holder but without success, Officers will consider using a more formal approach.

Formal Caution

- 6.9 The Council may consider issuing a formal caution in appropriate cases as an alternative to a prosecution. The person receiving a caution will be made aware of the implications and the fact that a further breach of licensing legislation or licence conditions is likely to lead to the suspension or revocation of a licence and/or prosecution. The purpose of a caution is to –
- ◆ deal quickly and simply with less serious offences;
 - ◆ divert less serious offences away from the courts;
 - ◆ reduce the chance of repeat offences.
- 6.10 Where a formal caution is under consideration, the following conditions must be fulfilled before it is given –
- ◆ there must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction if a prosecution were to be taken as an alternative; and
 - ◆ the suspected offender must admit the offence; and
 - ◆ the suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned.
- 6.11 The formal caution will only be administered by the Head of Democratic and Central Services or Central Services Manager. Where a person declines the offer of a formal caution, it will be necessary to consider taking alternative enforcement action. This could include suspension or revocation of or refusal to renew a licence or prosecution. The criteria for prosecution will be reconsidered in the light of the person's unwillingness to accept a formal caution.

Prosecution

- 6.12 Prosecution is one of a number of enforcement options available to the Council. Each case needs to be considered on its own merits and any policy

therefore cannot be prescriptive. The prosecution policy is attached as Appendix B and is consistent with the Enforcement Concordat agreed by central and local government and which the Council has adopted.

- 6.13 Through its Constitution, the Council has delegated responsibility for licensing matters to the Licensing and Protection Panel. The Licensing Committee is a statutory committee established by legislation. Both the Panel and the Committee have delegated authority to institute proceedings for contravention of legislation to the Director of Central Services or the Head of Democratic and Central Services, after consultation with the Chairman or Vice Chairman of the Panel or Committee, as appropriate. The Council's Head of Law, Property and Governance will be consulted as part of the decision making process and dependent on the case in question other appropriate persons and bodies may be consulted including the Council's Head of Environmental and Community Health Services, Cambridgeshire Constabulary, Cambridgeshire Fire and Rescue Service and external professionals/experts in connection with licensing issues.
- 6.14 Officers will gather appropriate evidence and prepare the case for prosecution on behalf of the Council. Where, having considered all the evidence, it is felt by Officers that a prosecution may be warranted, the authorisation of the Director of Central Services or the Head of Democratic and Central Services will be sought. Following agreement to proceed, the Head of Law, Property and Governance will instigate the prosecution in consultation with the Case Officer. Regard will be had during the investigation to the requirements of the Police and Criminal Evidence Act 1984 (PACE), the Criminal Procedure and Investigation Act 1996 (CPIA) and the Regulation of Investigatory Powers Act 2000 (RIPA).

LICENSING ACTIVITIES

GAMBLING

Gambling Act 2005

Casinos
Bingo premises
Betting offices
Track betting
Adult gaming and family entertainment centres
Gaming and machine permits
Prize gaming
Small society lotteries

ENTERTAINMENT

Licensing Act 2003

Sale and supply of alcohol
Regulated entertainment comprising plays, films, indoor sporting events, boxing and wrestling, live and recorded music, and dance.
Late night refreshment
Temporary events notices

Local Government (Miscellaneous Provisions) Act 1982

Sex establishments comprising sex cinemas, sex encounter establishments and sex shops

HACKNEY CARRIAGE AND PRIVATE HIRE

Town Police Clauses Act 1847

Local Government (Miscellaneous Provisions) Act 1976

Hackney carriage vehicles and drivers
Private hire operators, vehicles and drivers

TRADING AND COLLECTIONS

Police, Factories, etc (Miscellaneous Provisions) Act 1916

Street collections

House to House Collections Act 1939

House to house collections

Local Government (Miscellaneous Provisions) Act 1982

Acupuncture, tattooing, ear piercing and electrolysis
Street trading

Local Government (Miscellaneous Provisions) Act 1976

Pavement cafes

PROSECUTION POLICY

1. In order to ensure public safety, the Council will use a variety of means to ensure that the law relating to various licences listed in Appendix A and for which the Council is the licensing authority is complied with within the District. This will include education, advice, guidance, formal cautions, statutory notices and prosecution.
2. The Council will use discretion in deciding whether to initiate proceedings leading to a prosecution. In general, Officers will attempt to ensure compliance with the licensing legislation and licence conditions by informal means except where they have grounds to consider that it is necessary to serve a formal notice or recommend prosecution. The Council recognises that the decision to prosecute is significant and could have far reaching consequences on the offender. Before deciding whether to initiate proceedings leading to a prosecution, they will take account of the criteria set out in paragraph 3 below.
3. The decision to prosecute has been delegated by the Council's Licensing and Protection Panel and Licensing Committee to the Director of Central Services or the Head of Democratic and Central Services, after consultation with the Chairman or Vice Chairman of the Panel or Committee. Public safety will be of paramount consideration and the following matters will be taken into account in addition to any other matter which may be considered relevant in any particular case –
 - 3.1 Whether the evidence available is sufficiently reliable, admissible and substantial to provide a realistic prospect of conviction, having regard to the evidential and public interest tests set down in the Code for Crown Prosecutors and any other prosecution code or government guidance for the time being relevant to the case under consideration.
 - 3.2 The general record and attitude of the offender.
 - 3.3 The attitude and reliability of any witnesses.
 - 3.4 The gravity of the offence (including where the alleged offence involves a breach of the licensing legislation or licence conditions such that public safety or well-being is placed at risk).
 - 3.5 The failure by offenders to comply with previous written directions given by Officers provided that offenders have been given reasonable opportunity to comply with those directions.
 - 3.6 Whether it is desirable to deter others from similar failures to comply with licensing legislation or licence conditions.
 - 3.7 Whether it is more appropriate after consideration of all of the circumstances and on being satisfied of a person's guilt and the offender accepting that guilt, to offer a formal caution in accordance with guidance laid down in Home Office Circular 30/2005.

4. This prosecution policy also relates to the prosecution of individuals and individual managers or directors whether the Council considers that a conviction is warranted and it can be shown that the offence was committed with their consent or connivance or to have been attributable to neglect on their part.
5. Having decided to prosecute, the policy of the Council is to prosecute without any unnecessary delay. Once the prosecution has been determined by a court of law, the Council will contact the witnesses involved to inform them of the outcome.
6. The Council take seriously its obligations arising from the Human Rights Act 1998 and associated legislation. It will endeavour at all times to act compatibly with this legislation.
7. This policy is consistent with the Enforcement Concordat agreed by central and local government and the Regulators' Compliance Code.