

## **Licensing Enforcement Policy**

### **Introduction**

Dover District Council is committed to protecting its citizens through the implementation of the statutory systems of licensing and does this in a number of ways including:

- establishing appropriate policies
- providing advice and guidance
- establishing appropriate licence conditions
- carrying out inspections
- consulting with other agencies
- assessing suitability and fitness
- determining applications for licences
- undertaking monitoring
- responding to complaints
- initiating appropriate disciplinary action
- initiating legal intervention where necessary
- refusing, revoking, suspending or varying licences

The service aims to enforce the law by carrying out the regulatory functions, including the implementation of enforcement actions in a consistent and transparent manner in order to protect the citizens of and visitors to the Dover district.

Many licensed activities take place outside normal office hours and the service will monitor activity at these times while the operation is taking place.

In carrying out its statutory functions the service consults and liaises widely with internal and external agencies including Kent Police, Kent Fire & Rescue, Magistrates and other local authorities.

This statement sets out the current approach to enforcement by the Licensing Service of Dover District Council. The approach is based upon the principles of good enforcement, as detailed by the Enforcement Concordat; a central and local government guide to enforcement functions. Regard is also taken to the Council's corporate enforcement policy.

### **Areas of Responsibility**

Many pieces of legislation require the implementation of systems of licensing and the service has responsibilities to determine and enforce many licensing regimes. The licensing authority has the responsibility for determining applications for licences, permits and registrations as detailed in the following table:

- Amusements with prizes (Gaming machines)
- Animal boarding establishments
- Alcohol and entertainments
- Breeding of dogs
- Dangerous wild animals
- Ear piercing, tattooing, electrolysis, acupuncture, skin colouring
- Exhibition of animals
- Hairdressing registration
- Hackney Carriage & Private Hire drivers
- Hackney & Private Hire vehicles
- Hackney & Private Hire Operators
- Hiring of horses
- Home boarding establishments
- House to house collections
- Late night refreshment
- Lotteries (Raffles)
- Game dealers
- Performing animals
- Pleasure boats
- Scrap metal dealers
- Selling animals as pets
- Sex shops
- Street collections
- Street Furniture
- Street trading
- Zoos

In some areas there is potential for a shared enforcement role with agencies such as the Kent Police, Kent Fire & Rescue Service, Vosa, Trading Standards and other council agencies. Wherever such issues arise the Licensing Service has put in place liaison arrangements to ensure the law is administered effectively and efficiently and that joint enforcement action complies with the principles outlined in this policy.

### **Purpose and Methods of Enforcement**

We will take care to help individuals and organisations comply with their legal obligations without unnecessary expense, while taking firm enforcement action, including prosecution and licence revocation where appropriate against those who flout the law or act irresponsibly. Included in the term 'enforcement' are advisory visits, routine inspections and assisting with compliance as well as formal enforcement action.

Powers available to officers include:

- verbal advice
- visits and routine inspections
- warning letters
- enforcement notices
- suspension of licence;

- instigation of prosecution or caution where a criminal offence has been committed
- recommendation of revocation, variation or refusal of a licence

## **Enforcing the Law**

Licensing Services believes in firm but fair regulation, and its enforcement activities follow these essential principles:

- openness about how we operate and what the regulated may expect
- consistency of approach
- targeting of enforcement action
- proportionality in applying the law and securing compliance
- accountability of our service and actions

## **Openness**

Openness means helping individuals and businesses to understand what we expect of them and what they should expect from us.

It also means making clear why an officer intends to, or has taken enforcement action. This means distinguishing between statutory requirements and good practice. Individuals and organisations need to know what to expect from enforcing authorities and their procedures with regard to regulation. We will ensure that, wherever possible: -

- where action is required, it is clearly explained (in writing, wherever possible) why the action is necessary together with a suitable timescale with distinction being made between good practice and what is legally required
- General issues are discussed on what is required by law before enforcement action is taken, unless urgent action is required to protect service users or prevent evidence being destroyed;
- where urgent action is required, a written explanation of the reasons is provided as soon as practicable after the event.

## **Consistency**

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.

Individuals and organisations have the right to expect consistency in the advice given, use of enforcement powers, decisions to prosecute and the use of disciplinary procedures. Officers need to take into account many variables including the scale of impact on public safety, the effect of any non-compliance on others, the attitude and competency of the offender and history of previous incidents. Decisions on enforcement action are a matter of professional judgement and the officer must exercise both consistency and discretion, including effective arrangements for liaison with other enforcement authorities. Where any doubt arises, discussions will be held with senior

officers to agree the necessary course of action and to ensure a consistent approach. In addition, enforcement activities will be undertaken in accordance with the Council's Equal Opportunities Policy and with due reference to the provisions of the Human Rights Act and European Convention on Human Rights.

## **Targeting**

Targeting means making sure that, whilst all request for service are responded to, regulatory effort is directed primarily towards those whose activities actually or potentially give rise to the most serious risks to public safety.

We will take into account the hazards associated with each activity requiring a licence and the nature and extent of the risks involved to the health and safety of the public. Licensing Services will prioritise enforcement activity according to the risks posed by the type and scale of the operation.

## **Proportionality**

Proportionality means relating enforcement action to the risks posed. Any action taken by officers to achieve compliance will be proportionate to the seriousness of any breach, whilst upholding current legislation.

The following principals will be applied in order to ensure proportionality in enforcement activities carried out by the Licensing Section:

1. Enforcement will only be carried out when necessary. This does not preclude compliance inspections being carried out.
2. Remedies should be appropriate to the risk posed. There may be occasions when the prosecution of a single licence holder is necessary in order to prevent or rectify a perceived, widespread, breach of legislation.
3. Costs should be identified and, so far as is practicable, minimised.
4. Enforcement managers must be able to justify decisions and be subject to public scrutiny.
5. Rules and standards must be joined up and implemented fairly.
6. Enforcement should be open, simple and easy to understand.
7. Enforcement should be focused on the problems and minimise side effects.

Some incidents or breaches of regulatory requirements may put the safety of service users at serious risk. The enforcement action taken will be proportionate to the risks posed and the seriousness of any breach of the law or licensing requirement. Consideration will also be paid to The Code for Crown Prosecutors 2000 when considering the instigation of legal proceedings, and advice taken from the Legal Services Section of the Council.

## **Accountability**

Should there be elements of dissatisfaction with the level of service or inspection carried out, we would welcome constructive criticism about what could be improved.

Our complaints procedure is well publicised (and appears on the Internet) making it easily accessible to business, the public, employees and consumer groups. All complaints are viewed as learning opportunities and are NOT used as a reason to penalise any of the parties involved, unless there has been evidence of misconduct. In cases where disputes cannot be resolved following formal enforcement action, the right of appeal will be explained, and appropriate time scale outlined. Information about the Local Government Ombudsman will be provided where agreement cannot be reached.

## **Taking Remedial Action**

The Licensing Service seeks to secure compliance with the law in a variety of ways. Most of the dealings we have with individuals and businesses are informal, providing advice and assistance over the telephone, during visits and in writing. However, where informal methods have been unsuccessful, or a serious breach of a licensing condition or regulation is likely to occur which may endanger the safety of the public, formal enforcement mechanisms will be taken to ensure compliance with the law. Such action may involve:

- providing written requirements with reasons
- the service of statutory notices on licence holders
- issue of informal warning advising of the consequences of future non-compliance
- requiring reports from professional experts
- legal proceedings in the courts
- suspension of a licence
- refusal, revocation or variation of a licence

Legal or disciplinary proceedings may be instigated against individuals or organisations where any breach of licensing legislation has occurred and is an important part of the enforcement process. It aims to punish those who flout the law, to serve as a deterrent and to set an example to others that breach of legislation is punishable. In severe circumstances, prosecution without prior warning and licence revocation will be pursued.

Each decision on enforcement action will be taken on its own merits and after full consideration of the implications and consequences of the action. While fair and effective enforcement is essential to the maintenance of law and order, an alleged breach of criminal law does not necessarily result in action. There must be sufficient, admissible and reliable evidence that an offence has been committed and that there is a realistic prospect of conviction. Evidence must be useful, reliable and comply with the provisions of the relevant legislation.

If the case does pass the evidential test, the second stage is whether the action is needed in the public interest. These factors will usually depend on the seriousness of the offence or the circumstances of the offender. Some factors may suggest that another course of action may be more appropriate, such as issuing a formal caution rather than pursuing a prosecution or revoking a licence. Generally, however, the more serious the offence, the more likely it is that a prosecution or disciplinary action will be needed in the public interest. Each case is unique and is considered on its own merits.

## **Prosecution**

Prosecution of offenders will be considered where a person has failed to obtain a necessary licence, permit or registration or where any breach of licensing legislation is identified. Instigation of a prosecution will have regard to the Dover District Council legal proceedings procedure, advice from the legal officers and The Code for Crown Prosecutors 2000. In particular, where there is sufficient evidence, the decision to prosecute will also include a consideration of the following: -

- the potential of serious consequences for licence service users
- the potential for harm to public confidence in the licensing regime
- persistent breaches of regulatory requirements, including possible previous convictions and response to previous advice and the likelihood of a recurrence.
- mitigating circumstances or explanations offered for the offence.
- any financial advantage for the perpetrator from the commission of the offence.
- number of people affected by the offence, any circumstances causing public concern, and any views expressed by victims.
- the possibility of a 'reasonable excuse or due diligence' defence being successfully used by an organisation, where appropriate
- whether the defendant is a vulnerable member of society
- whether the conviction will result in a significant sentence.

Any recommendation to the legal officers to instigate legal proceedings must be authorised by the relevant senior officer.

## **Alternatives to Prosecution**

In cases where prosecution is not the most appropriate course of action, the following alternatives to prosecution will be considered:

1. An informal written warning. This brings to the attention of the offender the fact that a breach has occurred and the consequences of any further breach. This warning will normally be accompanied by guidance as to how to avoid a repeat of the transgression.
2. A formal caution. This is the written acceptance by an offender that they have committed an offence and may only be used where a prosecution may

have been instigated. A caution will only be brought to the Court's attention if the offender is convicted of a subsequent offence.

3. In circumstances that give rise to an immediate public danger or where the continuation of a licence would be likely to create a public nuisance that adversely affects the quality of life of a significant proportion of the residents in a particular location the immediate suspension of a licence may be justified.

### **Committee Hearings**

Where licence holders have:

- 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; or
- behaved in a way which is likely to have put the public at risk

In the case of more serious offences the committee may feel 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 disciplinary action we will:

- give sufficient notice of the date the matter is to be considered
- give notice to the licence holder of the charges against them
- provide the opportunity for the licence holder to be represented
- provide the licence holder with the opportunity to present their case and provide supporting evidence
- ensure the matter is determined in an impartial manner in accordance with the rules of natural justice
- provide written notice of the decision with reasons

### **Appeals**

Where there is right of appeal against formal action, advice on appeal mechanisms will be clearly set out in writing at the time the matter is determined or the action taken

January 2022