



Licensing Enforcement Policy

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Contents

Title	Page Number
Principles of Enforcement	
Enforcement Criteria	
Enforcement Options	
Informal Action	
Formal Cautions	
Penalty Points	
Prosecution	
Other Actions	
Dealing with Intelligence	
Equal Opportunities	
Review	
Contact Points	

1 General Principles of the Enforcement Policy

1.1 The purpose of the enforcement policy is to ensure compliance with the Licensing Act 2003 and the Gambling Act 2005, and to ensure the promotion of the licensing objectives under these two acts. Where appropriate the Council may use provisions under other Acts to ensure the promotion of the objectives. The relevant licensing objectives are:

Licensing Act 2003:

- a) The prevention of crime and disorder
- b) Ensuring public safety
- c) The prevention of public nuisance
- d) The protection of children from harm

Gambling Act 2005

- a) Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime; and
- b) Ensuring that gambling is conducted in a fair and open way; and
- c) Protecting children and other vulnerable persons from being harmed or exploited by gambling.

1.2 The enforcement policy also covers Sex Establishments under the Local Government (Miscellaneous Provisions) Act 1982. However, as this Act does not provide Licensing Objectives, the enforcement policy is in place for Sex Establishments to ensure compliance with licence conditions.

1.3 The following principles underpin this policy in relation to licensing enforcement:

- a) Standards: setting clear standards
- b) Openness: clear and open provision of information
- c) Helpfulness: helping business by advising on and assisting with compliance
- d) Complaints: having a clear complaints procedure
- e) Proportionality: ensuring that enforcement action is proportionate to the risks involved
- f) Consistency: ensuring consistent enforcement practice.

1.4 The Council is concerned with ensuring that there is a safe and trouble free environment at licensed premises. In most cases we believe that the best way to achieve this is to give guidance and support to licence holders. This is because in our experience responsible licence holders are anxious to stay within the law.

1.5 The Council aims to ensure that well run premises are able to operate successfully in the borough. But in all cases we will seek to balance the needs of businesses against the rights of residents to enjoy their homes and surroundings.

1.6 Formal enforcement action may be appropriate in certain cases, including those where the irregularity is particularly serious or there have been repeated offences.

2 Organisational Arrangements

2.1 Along with the Licensing Authority, the Responsible Authorities and other relevant teams and agencies have a role to play in the enforcement of the Acts and we work closely and effectively in partnership with these authorities to achieve this.

3 Enforcement Options

3.1 The Council recognises the importance of ensuring consistency of approach and effective use of resources by targeting those premises where problems have occurred. The procedures set out below are designed to ensure that enforcement is proportionate and that education and support is given where necessary but that firm action is taken against irresponsible premises operators. The procedures set out below reflect these general principles.

3.2 The main enforcement options include, without limitation:

- Take no action
- Advice and written warnings
- Simple Caution
- Prosecution
- Closure Notices (Criminal Justice and Police Act 2001)
- Review of Licences
- Injunctions (Local Government Act 1972)

3.3 When considering which course of action is appropriate, the factors that will be taken into account include:

- The gravity/seriousness of the infringement
- The nature of the alleged infringement
- The status, circumstances and previous history of the alleged offender
- The reliability and scope of the evidence collected
- The likelihood of the alleged offender being able to establish a statutory defence to the alleged infringement
- The desirability of a particular course of action in terms of the benefit to the community at large
- Regard to authoritative advice, guidelines and recommendations
- Explanation offered by the alleged offender, and the willingness to prevent a recurrence of any alleged infringement
- The general record and approach of the offender
- Whether it is desirable to produce some public effect (remedial or deterrent)
- Any other factors that may be relevant

3.4 Where a decision to prosecute is made, this decision will be taken in accordance with the Code for Crown Prosecutors, which details considerations to be taken in the public interest when bringing proceedings.

3.5 In certain cases a prosecution may take place without prior warning where there is potential for considerable harm arising from the breach.

3.6 All enforcement decisions and actions will be made with due regard to the provisions of:

- The Licensing Act 2003, Gambling Act 2005 or the Local Government (Miscellaneous Provisions) Act 1982
- Other relevant legislation, authoritative advice, guidelines and recommendations
- Equal rights and anti-discrimination legislation
- The Human Rights Act 1998

3.7 In the public interest, information and data concerning non-compliance will be shared, where appropriate, with other enforcement agencies. Where this takes place, due regard will be paid to the provisions of the Data Protection Act 1998.

4 Enforcement Approaches

4.1 The section details the approach the Council will take in specific circumstances. These approaches are common to all Acts unless stated otherwise.

4.2 Situations that are not covered by these specific approaches will fall under the general approach of the enforcement policy.

Unlicensed premises

4.3 For the purposes of this policy, premises providing unauthorised licensable activity will be treated in the same way as unlicensed premises. Unauthorised licensable activity includes activity not permitted on the licence, or activity that is provided in breach of conditions.

4.4 The underlying principle is that all premises providing licensable activity should have a valid premises licence or club premises certificate and should operate in accordance with the law.

4.5 When dealing with unlicensed premises, the licensing authority will take the provisions in Section 3 (Enforcement Options) into consideration, paying particular regard to the following matters:

a) Levels of crime and disorder, anti-social behaviour, public nuisance and public safety in and around unlicensed premises will be the key priorities.

b) If the premises has any licence at all, and the history of the premises

c) The steps a premises has taken to become licensed.

Unlicensed Alcohol Sales (Licensing Act 2003 Only)

4.6 Unlicensed Alcohol sales will be treated as a serious breach by the Council that will require action other than advice in the majority of situations.

4.7 For the purposes of this policy, unlicensed alcohol sales includes alcohol being sold in breach of condition(s) on a Premises Licence.

4.8 The Council may serve a Closure Notice under the Criminal Justice and Police Act 2001 in addition to action available under the Licensing Act 2003. This can be instead of other action that can be taken or as well as other action taken.

4.10 Where a Closure Notice has been served and the unlicensed sale of alcohol continues the Council may apply to the Magistrates Court for a Closure Order.

Sale of Alcohol to Children (Licensing Act 2003 Only)

4.11 Unlawful sales of alcohol to children will be treated as a serious breach under the Licensing Act 2003. Where the Council has evidence to prove alcohol has been sold to children, in breach of the Act, prosecution may be considered in the first instance without prior warning.

4.12 This does not prevent other forms of action being taken, either separately or in addition to prosecution and each case will be assessed on its own merits.

Temporary Event Notices (Licensing Act 2003 only)

4.13 Premises which benefit from a Temporary Event Notice and exceed the limits for qualifying events, for example by holding an event for more than 499 people, will be regarded as an unlicensed premises.

Sale of Alcohol and the Designated Premises Supervisor. (Licensing Act 2003 only)

4.14 All premises that sell alcohol under a premises licence must also have a Designated Premises Supervisor (DPS) named on the licence. The person named as the DPS must hold a valid personal licence for the premises to be able to sell alcohol.

4.15 If the Licensing Authority becomes aware that a premises is selling alcohol without a DPS who holds a personal licence the starting principle will be that the premises cannot sell alcohol until a DPS who holds a valid personal licence is named on the licence.

4.16 In all cases the Council will consider the steps taken by the DPS to apply for a personal licence before deciding what course of action (detailed in section 3) is appropriate.

Keeping of Licences, Display of Licence Summary's and Similar Provisions

4.17 All premises have to comply with various requirements under the Acts in respect of keeping and displaying the licence.

4.18 The starting principle is that all premises must comply with these requirements, and the Council will seek to ensure this is the case. Reasons for these requirements not being met could include administrative issues such as the licence not yet having been issued or a delay in the licence holder's representative in forwarding the licence to the premises.

4.19 In all cases, rather than taking formal action such as a simple caution or prosecution the Council will take an educational approach in the first instance.

4.20 Exceptions to this will be where there are multiple breaches of legislation that merit formal action. In these cases the Council may seek for these offences to also be considered.

4.21 Where there has been a persistent problem and no action has been taken to comply then prosecution may be considered.

Licence Reviews

4.22 The Licensing Authority may apply for a review of a licence as a Responsible Authority under the Licensing Act 2003 and Gambling Act 2005. The Licensing Authority also has a separate option to initiate a review under the Gambling Act 2005, which is essentially the same process for the purposes of the enforcement policy. A review application may be made on the grounds of non-compliance of licence conditions along with concern over the promotion of the licensing objectives. The decision to apply for a review may be brought about by any visits to the premises by officers, any intelligence received from other teams or agencies or by complaints that are made about the premises.

4.23 The revised Guidance (April 2017) issued to Licensing Authorities under Section 182 of the Licensing Act 2003 states that it is not expected that the Licensing Authority should normally act as a Responsible Authority in applying for reviews on behalf of other persons, such as local residents or community groups. If a request is made to the Licensing Authority to review a licence on behalf of another party, the Licensing Authority will have regard to any guidance on reviews and the enforcement policy when considering what course of action to take.

4.24 Where the Licensing Authority makes a review application officers will make recommendations to the Licensing sub-committee on what course of action may be appropriate in individual cases. The decision on what course of action to take rests with the Licensing sub-committee. The officer recommendations to the sub-committee could include:

- a. add, remove or amend a licence condition imposed by the Licensing Authority;
- b. suspend the premises licence for a period not exceeding three months; and
- c. revoke the premises licence.
- d. For gambling premises only - exclude a default condition imposed by the Secretary of State (relating to, for example, opening hours) or remove or amend such an exclusion;

4.25 A recommendation for the licence to be revoked will only be made where no other option is considered suitable to address the individual problems. This could occur as a result of a history of non-compliance where enforcement action including previous reviews has failed to resolve the problems or where the nature of the problems is considered serious enough to merit the licence being revoked.

4.26 It is acknowledged by this policy that the Licensing sub-committee would not be bound to following the officer recommendation and the sub-committee would have to reach a decision based on the evidence put before them from the Licensing Authority, Responsible Authorities, Licence Holder and any other person who has made a representation (or objection).

Licence Reviews for Gambling Premises

4.27 Where circumstances at a licensed gambling premises require action to be taken under this policy the approach of the Council will be to favour initiating a review of the licence over simple cautions or prosecution.

4.28 This does not prevent other forms of action being taken and each case will be assessed on its own merits.

Operational Arrangements for Licence Reviews

4.29 The Licensing Authority shall ensure that there is a separation of responsibilities within the Licensing Authority so that an officer advising the sub-committee determining the review will not be the same person who has made the application as a Responsible Authority. This is to ensure procedural fairness and eliminate conflicts of interest.

5 Complaints

5.1 The Council will keep a record of all complaints it receives that are relevant to licensed and unlicensed premises on a computer database.

5.2 Any complaints may be brought to the attention of other appropriate authorities. Where appropriate the Licensing Authority will:

- notify the licence holder and DPS and request that steps are taken to resolve the issues made in the complaint.
- keep the complainant updated with the progress of the complaint in accordance with the Council's Customer Care Standards.

5.3 Where the Licensing Authority investigates a complaint, it may do so by way of correspondence, an announced inspection, or a covert visit depending of the circumstances. The action that can be taken is detailed in the sections for inspections and investigation of unlicensed premises.

5.4 In some cases the Licensing Authority will not investigate complaints it receives. The reasons for this may be due to the nature of complaint not being relevant to licensing, or where one of the Licensing Authorities partners may be better placed to deal with the complaint. In these cases the complaint will be referred to the appropriate agency and the complainant notified of the reasons.

5.5 After the investigation of a complaint further action may be taken in line with this enforcement policy where appropriate.

6 Inspections and Visits to Premises

6.1 The underlying principle of the policy is that no inspection of a premises should take place without a reason.

6.2 The Council is responsible for ensuring that the licenses issued by the Licensing Authority are properly complied with and the licensing objectives are promoted. To enable the Council to assess whether licences are complied with and the objectives are being promoted Licensing Officers will visit and inspect premises when the necessary.

6.3 There are a range of circumstances that may result in Licensing Team needing to visit a premises, these are:

- a) Premises identified as high risk
- b) Inspections during the consultation period for an application, which includes new, variations, renewals and review applications
- c) Premises identified as a problem by other authorities
- d) Where complaints have been made that need investigation
- e) Premises where officers have witnessed grounds for concern
- f) Premises where other information suggests there is cause for concern
- g) Inspections as part of a wider project to ensure compliance at a particular class of premises or premises in a particular area.

6.4 To ensure that unnecessary burdens are not placed upon businesses and resources are targeted effectively the Licensing Authority will endeavour to work closely with all relevant enforcing bodies and teams within Castle Point when determining inspections of licensed premises. This means that the Licensing Authority may not inspect every premises that requires a licensing inspection and that a different enforcing body or team may include licensing checks as part of another inspection.

6.5 Where it is necessary for more than one enforcing body or team to inspect a premises joint inspections will be planned whenever possible.

Pre-arranged inspections

6.6 Inspections may be carried out during normal office hours when the premises is likely to be quiet by means of a pre-arranged appointment to ensure that the appropriate person at the premises is available. The inspection may include a comprehensive check to ensure the approved arrangements at the premises are being properly maintained which may be impractical to check when the premises is busy. Pre-arranged evening or night time visits may also be made if required so that activity provided at the premises may be assessed.

Un-announced Inspections

6.7 Un-announced inspections will usually be carried out for high risk premises in addition to any other inspection.

6.8 Other premises will be visited as required and may be where concerns are raised or complaints receive.

6.9 These inspections will be made at the most relevant time for licensable activity, mainly at night, but officers will identify themselves upon arrival at the premises.

6.10 Where problems are found such as unlicensed activity it may be necessary to carry out frequent inspections until compliance is achieved. The frequency required will be determined on a case by case basis.

7 Status and Review

7.1 The Members of Castle Point's Licensing Committee adopted this Policy on .

7.2 This is a public document and is available at www.castlepoint.gov.uk/licensing or by email Licensing@castlepoint.gov.uk

7.3 Complaints concerning the application of this enforcement policy will be dealt with in accordance with the Council's customer complaints procedure. Details of the procedure are available on www.castlepoint.gov.uk