

LICENSING AND SAFETY COMMITTEE

11 JANUARY 2005

LICENSING ACT 2003 – LICENSING ENFORCEMENT STRATEGY

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1. Summary

- 1.1 The purpose of this report is to ask the Licensing and Safety Committee to consider and endorse the proposed licensing enforcement strategy produced in conjunction with the council's statement of licensing policy pursuant to the Licensing Act 2003.

2. Decision Issues

- 2.1 The committee has delegated powers to determine this matter.

3 Background

- 3.1 At its meeting on 9 December 2004, Council approved the statement of licensing policy pursuant to the Licensing Act 2003, on how it will regulate licensable activities under the Act.
- 3.2 The statement of licensing policy refers to a licensing enforcement strategy which will be produced explaining how the council will undertake its role as the licensing authority and how the principles of effective enforcement will be achieved.
- 3.3 The Licensing Policy Advisory Group considered a draft licensing enforcement strategy and made some amendments. The revised version is attached at Appendix A.

4 Issues for consideration

- 4.1 The licensing enforcement strategy is intended to fairly and firmly enforce the law in a consistent and transparent way and in accordance with the four licensing objectives:-

- Prevention of crime and disorder
 - Public safety
 - Prevention of public nuisance
 - Protection of children from harm
- 4.2 The strategy stresses the continued necessity of liaison with regulatory agencies and information sharing. Licensing visits and a suggested matrix are detailed at paragraph 3 of the strategy followed by the need for consistency and proportionality.
- 4.3 Enforcement actions and options are explored at paragraph 6 of the strategy. Finally, a specific section devoted to hackney carriage and private hire licensing completes the strategy.
- 4.4 The Council delivers a wide range of enforcement services aimed at safeguarding the environment and the community but also providing a “level playing field” on which businesses can fairly trade. The administration and enforcement of the licensing regime is one of these services. The Council fully supports the principles of the Government’s Enforcement Concordat designed to ensure effective and efficient public protection services. Specifically, the Council is committed to accord with the principles of good enforcement practice by carrying out its regulatory functions in a fair, open and consistent manner.
- 4.5 The Council has established protocols with Kent Police, Kent & Medway Fire and Rescue Service on enforcement issues. These protocols provide for the targeting of resources towards high-risk premises and activities that require greater attention, while providing a lighter touch in respect of low risk premises that are well operated.
- 4.6 All licence holders will be expected to co-operate in order to promote the licensing objectives. Evidence of non-co-operation may be considered sufficient grounds for review and revocation of any licence.
- 4.7 The principle of using a scoring scheme based on risk factors will normally prevail and proactive inspections will usually be undertaken in accordance with a priority inspection scheme. This should ensure that resources are more effectively allocated to higher risk or “problem premises”. Monitoring visits will also take place in and around premises. This scheme is reflected in the enforcement strategy attached.

5 Financial and Legal Implications

- 5.1 The financial framework for the provision of licensing enforcement and regulatory services at Medway is established for the current financial year and this strategy has no impact on them. The strategy does not seek to influence the level of resources or commit the Council to a particular level of activity.

- 5.2 There is no statutory requirement for the licensing authority to maintain a licensing enforcement strategy. However, it is common for the legal advocates of defendants to query why a decision to initiate formal action was taken. This strategy provides a structured framework for decisions relating to enforcement action to be taken.

6 Recommendation

- 6.1 That the committee consider and endorse the proposed enforcement strategy as detailed at Appendix A to the report.

7 Background Papers

1. Licensing Act 2003
2. Licensing Act guidelines dated 7 July 2004
3. Medway Council approved statement of licensing policy dated 9 December 2004

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**MEDWAY COUNCIL
LICENSING ENFORCEMENT STRATEGY**

1. Aim

This strategy is intended to fairly and firmly enforce the law in a consistent and transparent way and in accordance with the four licensing objectives:

- Prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

The Council will assist and advise wherever appropriate but proportionate action will be taken against those who breach the provisions of the legislation.

The Council has adopted the provisions of the Government's Enforcement Concordat.

2. Liaison with regulatory agencies

The Council will work actively with the Police and other bodies (Fire and Rescue Service, Customs and Excise, Trading Standards, Child Protection, Health and Safety Executive, Security Industry Authority, Crown Prosecution Service, etc), in enforcing the licensing legislation. This will necessitate the sharing of information in relation those persons involved in licensing and relevant premises based on the requirements of the Licensing Act 2003, Criminal Justice and Police Act 2001, Anti-Social Behaviour Act 2003, Criminal Justice and Public Order Act 1994, Crime and Disorder Act 1998 and other relevant legislation.

There are various statutory provisions that enable the Council to exchange relevant information with other bodies. These provisions will be used as appropriate.

This enforcement strategy in no way restricts other regulatory bodies from carrying out enforcement under their own regulatory powers.

3. Licensing Visits

Council officers will make licensing visits to premises and may on occasion be accompanied primarily by Police and or other regulatory agencies. Both the Council and the other relevant agencies firmly believe that working with business is the primary method to achieve the licensing objectives but will take appropriate enforcement action if necessary.

The visiting regime for premises is not decided solely on a risk assessment basis. The Council will, as part of its proactive stance, make regular visits to and in the vicinity of licensed premises in order to assess the impact of their operation on residents and other businesses in the area.

There will be a presumption that visits will take place when various crime and disorder and other indicators show that there are potential problems developing in relation to specific premises or areas.

To assist in determining which premises are likely to require regular enforcement visits/activity the Council will utilise the following matrix:

<u>Type of premises</u>	<u>Location</u>	<u>History</u>
Night Club (7)	Town Centre (3)	Problems with Premises (3)
Public House type premises with entertainment (6)		
Public House type premises no entertainment (5)		
Off Licence premises (4)	Residential area (2)	Problems in the locality (2)
Restaurant (3)	Rural (1)	No problems (0)
Hot food take away (2)		
Members Club type premises with entertainment (2)		
Premises licensed For entertainment only (2)		
Hotel (1)		
Members Club type premises no entertainment (1)		

Risk will be assessed by adding the value attached to the premises to those relating to location and history, the higher the figure reached, the more frequent visits will be made.

Periodic reviews of individual premises "score" will take place in order to achieve a consistent approach.

The Council will monitor patron movement to, from and between premises and the provision and accessibility of transport to assist dispersal of persons away from licensed premises. The information gained from these monitoring exercises will inform the development of the Councils Licensing Policy.

4. Consistency

The Council and its officers will act in a fair and consistent manner. Council officers whilst exercising their professional judgement in individual cases will do so within a framework based on consistency and fairness in action.

There will be specific circumstances when the Council will share an enforcement role with the Police or other agencies. When this occurs the same degree of consistency and fairness will be applied.

5. Proportionality

The Council, Police and other enforcement agencies will, as far as the law allows and where co-operation is given, work with business/licensees to enable them to meet their legal obligations without undue cost. The Council will take into account the cost of compliance by ensuring that any enforcement or remedial action required is proportionate to the risks. However clear breaches of the legislation may attract prosecution and /or recommendation for review of the licence where it is deemed to be in the public interest.

6. Enforcement Action/Options

- a) The initial contact between Council and Business/Licencees will normally be informal, with the provision of advice, guidance and support.
- b) Enforcement action, dependent on the seriousness, can include the following to achieve compliance:
 - Verbal advice- *which may be documented*
 - Written advice
 - Verbal warning- *which will be documented*
 - Written warning
 - Statutory Notice
 - Formal Caution
 - Prosecution

The individual circumstances of the breach of the legislation will determine the level of enforcement.

In the case of a premises licence the Council or the Police may ask for a review.

All actions will be considered in accordance with the requirements of the Human Rights Act 1998 and considered on its individual merits.

On conviction of a relevant offence Magistrates may endorse, suspend or revoke a Personal Licence.

Council Officers, Police or Crown Prosecutors may relating to such a conviction remind the Magistrates of their powers to endorse, suspend or revoke a Personal Licence.

- c) When prosecution is being considered, the relevant enforcement bodies will on a case-by-case basis decide which is the lead authority to prosecute the offence.

Regard will be taken of the Code of Practice made under Section 10 Prosecution of Offences Act 1985 and issued by the Crown Prosecution Service. Due consideration will be give to any guidance and/or advice issued by Government, Local Authority Association and other professional and technical bodies. Statements will be provided as regard to evidence from one agency to another as necessary.

Before deciding whether to prosecute the following factors will be considered:

- The seriousness of the alleged offence
- The history of the business/person concerned
- The willingness of the business/individual to prevent a reoccurrence of the problem and the level of cooperation with Council officers, Police and/or other agencies
- Whether it is in the public interest to prosecute
- The realistic prospect of conviction
- Whether any other action (including a formal caution) would be appropriate
- The views of any complainant and other parties with an interest in a prosecution.

The Council takes a proactive stance towards the proper regulation of, and enforcement of the provisions of this legislation. The Council will normally take the lead on issues including:

- Noise
- Production and display of relevant licences and documents
- Unauthorised licensable activities in relation to the provision of regulated entertainment
- Breaches of conditions of premises licences
- Breaches of requirements under Temporary Events Notices
- Exposing and keeping of alcohol on premises for unauthorised sale

Other breaches of the Act will be dealt with either directly or jointly as indicated above. The Council will give full cooperation to any other agency in carrying out their investigations.

HACKNEY CARRIAGE / PRIVATE HIRE VEHICLES AND DRIVERS

Medway Council expects a high standard to be maintained in respect of both vehicles and drivers licensed by the authority. As a consequence, the Council has set clear standards and conditions in respect of which strict compliance is expected.

In order to maintain this standard in addition to the regular mechanical inspection of vehicles, the Council will undertake periodic vehicle checks in conjunction with other agencies such as the police and DVLA. Additionally the Council's Enforcement Officers will undertake spot checks of vehicles and drivers as and when appropriate. These checks will be used amongst other things to ensure that matters such as appropriate vehicle signage and conditions are being complied with and that drivers and vehicles are properly licensed.

The Council also investigates specific complaints received and may share information with other enforcing authorities if criminal offences are evident.

In order to achieve consistency and a degree of certainty, dependant upon the circumstances of any breach the following actions may be taken:

- Verbal advice
- Verbal warning – *which will be documented*
- Written warning
- Final written warning
- Suspension of drivers / vehicle licence
- Revocation of drivers / vehicle licence
- Formal caution
- Prosecution

Licensing Enforcement Officers have been delegated in the above powers by the Council's Licensing and Safety Committee, however the question of either a lengthy suspension or revocation is likely to be referred to the Licensing Sub-Committee for determination.

Should officers impose an immediate suspension or revocation then a right of appeal exists to the Licensing Sub-Committee. Should such an appeal be pursued, any suspension/revocation will be suspended pending the outcome of the appeal. Similar provisions apply to decisions of the Licensing Sub-Committee.

If necessary, the Council may take appropriate legal action to secure the protection of the public during any appeal process.

When determining what, if any action will be taken in respect of a breach officers/sub-committee will normally take into account any previous action taken.

The following list is an indication of the approach likely to be taken but it must be borne in mind that all relevant factors will be taken into account when determining what if any action is to be taken.

1. Minor breach of conditions (e.g. door signs not displayed)
 - 1st occasion – verbal warning
 - Repeat within 6 months of verbal warning – written warning
 - Repeat within 9 months of written warning– suspension
 - Repeat within 18 months of written warning– final written warning

2. More serious breach (e.g. vehicle defects)
 - 1st occasion – written warning
 - Repeat within 9 months of written warning – suspension
 - Repeat within 18 months of written warning– final warning

More persistent breaches are likely to result in immediate suspension and referral to the Licensing Sub-Committee for consideration of revocation of a licence. In circumstances of a serious nature, when immediate action is required authorised officers may revoke a licence.

Convictions for criminal offences will be considered and appropriate action taken dependent on the nature and seriousness of the offence.

Proceedings for offences of a sexual nature or violence are likely to result in an immediate suspension of a driver's licence.