



# **Licensing Enforcement Report April 2012 to March 2013**

Prepared by Lynsey Keen, Senior Licensing & Enforcement Officer

# Introduction

The licensing enforcement team consists of:

- Lynsey Keen - Senior Licensing Enforcement Officer
- Charles Bennett - Licensing Enforcement Officer
- Franco De Fazio - Licensing Enforcement Officer

Our work comes to us in 2 ways:

1. **Re-active** – As a result of a complaint from a member of public or another enforcement agency regarding a person, vehicle or premises licensed by the licensing team. It also includes unlicensed activities taking place.
2. **Pro-active** – This is using intelligence received from a number of sources and by risk rating premises to enable us to focus resources in a productive way and wherever possible in conjunction with our partners.

## Compliance

We estimate that 90% of our visits / inspections are dealt with as compliance with legislation, licences and permits etc. Where we provide advice or give a timescale to rectify any issues this is not actual enforcement and falls within compliance activity. We aim wherever, possible to give the licensee(s) and the public the benefit of the doubt and through education and guidance they can rectify problems as quickly as possible.

## Enforcement

We estimate that 10% of our visits / inspections result in enforcement activity such as verbal warnings, written warnings, suspensions, cautions, reviews and prosecutions. There is a small proportion of licensee(s) and the public that cause us serious concern and are dealt with in accordance with our enforcement procedure.

## Our Responsibility

As a team we need to make sure that there is compliance with legislation and conditions relating to a wide variety of licences, permits and notifications that are granted by the council.

These are some areas we are responsible for:-

### Licensing

Persons/Premises that hold licensable activities, such as the sale by retail of alcohol, the supply of alcohol by or on behalf of a club to a member of the club, the provision of regulated entertainment or the provision of late night refreshment. Types of licences/applications include premises licences, club premises certificates, temporary event notices and personal licences. We also deal with any premises providing licensable activities which is not licensed.

### Taxis

Licensing vehicles, drivers and operators that provide a transport service (for up to eight passengers) for hire and reward. The relevant licences are: Hackney Carriage Vehicle, Hackney Carriage Driver, Private Hire Vehicle, Private Hire Driver and Operators. We also deal with drivers or vehicles that are not licensed.

### Gambling

Persons/Premises licensed to offer gaming machines or certain types of gambling at members club's and public houses. We are not authorised to enforce those who are issued a Premises Licence under the Gambling Act 2005 such as bingo halls, adult gaming centres, family entertainment centres, betting shops, racetracks or casinos.

Types of permits/notification for pubs and clubs are called licensed premises gaming machine permits, club gaming permits, club machine permits or notifications of 2 or less machines. Organisations can carry out lotteries either small society lotteries, incidental non-commercial lotteries, private lotteries and customer lotteries. We also deal with those premises carrying out gambling which are not licensed.

### **Sex Establishments**

Premises licensed as Sex Establishments; which includes Sex Shops Licence, Sex Cinemas Licence or Sex Entertainment Venues Licence. We also deal with those premises that operate unlicensed or monitor those who provide the exemption for up to 11 events per calendar year.

### **Street Trading**

Vendors who have temporary structures who wish to trade on the highway, these are referred to as street trading consents. We also deal with those operating unlicensed.

### **Charity Collections**

Those licensed for street collections and house to house collections. We also deal with those who are collecting unlicensed.

## **Overview**

### ***Licensed Premises***

We have seen 21 licences surrendered during the last financial year which has resulted in some of these buildings applying for different types of licences and others changing planning use to residential. However, we do have a number of derelict buildings that still hold a licence, where we are unable to find the licence holder to surrender the licence. We have spent time in trying to locate these people connected with premises but in most cases they owe the Council the licensing annual maintenance fees and therefore don't want to be found. We unfortunately cannot use the review procedure to revoke these licences and they remain on our register.

Recent legislation changes now gives us a power to suspend premises licences / club premises certificates for non payment of the annual maintenance fee until such time as the fee is paid however, it cannot be used for previous year debts. The licensing enforcement team are closely looking at adopting a procedure to deal with this. This involves working with our finance department and the licensing services team to make sure that all the administrative issues are dealt with, as the suspension cannot take place if the licence holder can prove there is an administrative error as to why they have not paid the fee.

The high turnover of licence holders (transfers 72 over the last financial year) and designated premises supervisors (changes of DPS 111 over the last financial year) makes it very difficult to keep track of the owners and responsible persons without carrying out constant licensing checks to ensure that we maintain good working practices. In partnership with the police we are using Operation Trigger, which runs every two weeks to visit premises where changes have taken place.

Due to the volume of licensed premises in Medway it is difficult, with existing resources, to implement a system where each premises receives regular enforcement visits. It is apparent that certain premises repeatedly come to our attention. Therefore, we must prioritise and focus activity on high-risk premises that cause crime and disorder, endanger public safety or cause a nuisance as a result of bad management. In these circumstances, we deal with the issues through a multi-agency approach. This continues to provide results and contributes to the statistical information provided in this report.

### ***Gambling at Pubs and Clubs***

The most common gambling offences are, not having the correct permits for gaming machines, holding illegal lotteries mainly as a result of having rollovers, no controls on games such as bingo, poker and card games. Some of these require staff to have financial controls on logging gambling activities within accounts of clubs or having records for pubs.

Illegal gaming machines found in licensed premises are still a concern and we work closely with the gambling commission on Operation Bragg to find the illegal operators who normally only provide licensees with mobile telephone numbers. Those venues with illegal machines are given the opportunity to remove them within 7 days, which tends to happen in 99% of cases. Only 1 written warning has been issued in relation to illegal gaming machines. We do not have the facilities to seize machines and therefore we make sure they are switched off and not being used for the public when we leave the premises.

We have also been involved in the meetings around the proposed voluntary code of practice with gambling operators due to concerns raised on B2 gaming machines in Betting Shops. Under the Gambling Act 2005 we do not have the power of entry into Gambling Premises (licences such as Adult Gaming Centre, Bingo, Betting Shops and Family Entertainment Centres). We welcome the opportunity to improve working relationship with this part of the gambling trade. These premises are highly regulated by the Gambling Commission.

### ***Taxis (Hackney Carriage and Private Hire Vehicles)***

Licensing enforcement officers do not have any powers to stop a moving vehicle, which does create us some problems, as we must rely on our partners the Police and VOSA who are authorised to stop vehicles. In the past we have attended the police operations on road stop checks such as Operation Earthquake but found this does not provide us with the best results, as the drivers would notify others on their radio to stay away from the location of the road stop check.

We regularly inspect our Hackney Carriage vehicles that are sometimes positioned on the ranks around Medway but that doesn't help us deal with inspections on Private Hire Vehicles.

We created Op Trinian's, which has given us some good results by working with our colleagues who deal with school contracts. The schools have welcomed our attendance and we carry out the inspections after they drop off the children and before they pick up the children to make sure the vehicles are safe. It also gives the school contract team the chance to inspect PSV vehicles, for which we are not responsible and to make sure those completing the contracts have got the correct children and routes, and the escorts are duly authorised and badged.

Over the past year we started Operation Chaser, which has quickly become our most important taxi operation, this operates monthly working in partnership with the Police Special Constables. The reason this has become so productive in targeting those who flout the legislation, conditions and bylaws is that the police can pull over the vehicle and we can carry out an inspection at any location. Vehicles are only pulled over when we suspect something is wrong.

The most common issues we find are:-

- damage to the vehicle – failing to notify us of an accident
- not displaying door signs
- not displaying the plates correctly
- dirty vehicles

This tends to lead to further issues such as no fire extinguisher in the vehicle, cosmetic damage inside the vehicle and failing to display the fare card to name a few issues.

# Administration

## Temporary Event Notices

The licensing enforcement team have been processing temporary event notices for the last few years but as from this financial year it has been handed over to the licensing services team with us supporting when necessary.

There is a statutory requirement to acknowledge each temporary event notice to the responsible person within 24 hours of receipt of the notification.

This also requires electronic liaison with both the police and environmental health to make sure that the notice was served correctly in the timescales as this effects the times that they have to object to the notice or liaise with the responsible person.

	2011/12	2012/13
<b>Temporary Events Notices Processed</b>	<b>338</b>	<b>373</b>

## Compliance and Enforcement PAD's

As of 1 April 2013 we have instigated a new system to aid licensee(s) / public when we deal with all areas of compliance and enforcement. This was mainly due to the success of the officer reports, which we have completed over the last few years however, we did get complaints from some that there was a delay from the time of the visit to the time of receiving the officer report through the post.

Each pad is carbonised so that we can tear off an instant sheet for the licensee(s) / public to keep and for us to take away the original with a signature from the person we have spoken too as our official record of the visit. Each sheet is specifically designed to the relevant area of licensing i.e. inspection of a vehicle to a gaming machine inspection. Each sheet has a notes field explaining any issues identified and what the person needs to do to rectify it. The back of each sheet explains the powers of officers entry / inspection and any appeal processes. This enables the information to be passed to the responsible person and if necessary call the relevant officer to discuss the matter further.

The pads have made it easier for the team to be able to produce the required statistics for the relevant returns as requirement by the Government and other enforcement agencies and for the key performance indicators for our department. We have also been sharing this system with other licensing authorities in Kent.

## Acting as a Responsible Authority under Licensing Act 2003 and Gambling Act 2005

The Licensing Enforcement Team act as the responsible authority under both licensing and gambling legislation. This requires us to view all applications received under these pieces of legislation.

Licensing authorities are not expected to act as a responsible authority on behalf of other parties i.e. the public, councillors or other agencies. It is also reasonable to expect that other responsible authorities should intervene where the basis for the intervention falls within the remit of that other responsible authority.

We have submitted two representations under the Licensing Act 2003 in relation to a variation of premises licence and a minor variation asking for a condition to be added which the applicant has agreed therefore granted under officer delegations. We have also put forward a representation in relation a Licensed Premises Gaming Machine Permit, however, this was prior to the changes of the Gambling Policy around numbers of gaming machines in licensed premises. It was decided as no policy was in place to remove our objection on a legal basis.

This continues to be a focus for the coming year in viewing all applications that potentially could affect the licensing objectives.

On rare occasions where there are issues that cannot be addressed in relation to the licensing objectives we will consider a Review of the licence. This will be seen as a last resort and will aim to gather as much information/evidence from a wide range of sources including other responsible authorities that may be called as witnesses.

## Re-active Compliance Activity

The complaint procedure is an important part of dealing with allegations from the public about breaches in legislation.

	2010/11	2011/12	2012/13
Licensing	59	36	38
Taxis	75	79	75
Street Trading	5	13	9
Scrap Metal	2	1	2
Charity Collections	0	2	7
Gambling	3	0	1
Sex Establishments	0	1	4
<b>Total</b>	<b>144</b>	<b>132</b>	<b>136</b>

All calls now go through to the customer contact team who advise customers to complete an e-form. This guides the public to provide the details we require to be able to investigate a complaint. However, we still get a lot of anonymous complaints and in some situations they are determined as malicious or we are unable to gain further information to be able to fully investigate.

Dealing with some types of complaints can take considerable time to investigate. When acting on the complaint we try to keep the complainant up to date with our investigation and on completion we notify them of the result. In some cases, we have to direct complainants to other services or enforcement agencies as they can sometimes lead onto other issues that licensing enforcement cannot deal with.

## Pro-Active Compliance Activity

Licensing - Visits	2010/11	2011/12	2012/13
Partnership Visits with other departments / agencies	259	118	173
Licensing Enforcement Visits (without partners)	191	94	88
<b>Total Visits</b>	<b>450</b>	<b>212</b>	<b>261</b>

Licensing - Notice Checks	2010/11	2011/12	2012/13
Visit to make sure notices relating to applications are displayed at the premises	84	144	142

<b>Taxi - Inspections</b>	<b>2010/11</b>	<b>2011/12</b>	<b>2012/13</b>
Specification Checks (new vehicles), Accident Checks and Re-Inspection held in Gun Wharf Loading Bay	<b>Combined into figures below</b>	<b>259</b>	<b>319</b>
Inspections of Hackney Carriage Vehicles out and about in Medway	<b>307</b>	<b>111</b>	<b>193</b>
Inspections of Private Hire Vehicles out and about in Medway	<b>67</b>	<b>42</b>	<b>49</b>
<b>Total Inspections</b>	<b>374</b>	<b>412</b>	<b>561</b>

<b>Gambling - Inspection</b>	<b>2010/11</b>	<b>2011/12</b>	<b>2012/13</b>
Visits to pubs and clubs checking they have the correct permits	-	<b>42</b>	<b>27</b>

<b>Street Trading - Inspection</b>	<b>2010/11</b>	<b>2011/12</b>	<b>2012/13</b>
Visit to Vendors to make sure they have consent	-	<b>1</b>	<b>17</b>

## **Enforcement Activity**

<b>Licensing - Enforcement</b>	<b>2010/11</b>	<b>2011/12</b>	<b>2012/13</b>
Verbal Warnings	<b>43</b>	<b>8</b>	<b>11</b>
Written Warnings	<b>55</b>	<b>44</b>	<b>40</b>
Cautions	<b>0</b>	<b>2</b>	<b>2</b>
<b>Total</b>	<b>98</b>	<b>54</b>	<b>53</b>

<b>Licensing - Taxis</b>	<b>2010/11</b>	<b>2011/12</b>	<b>2012/13</b>
Warnings – Verbal & Written	<b>55</b>	<b>18</b>	<b>27</b>
Cautions	<b>2</b>	<b>0</b>	<b>3</b>
Vehicle Suspensions	<b>39</b>	<b>18</b>	<b>59</b>
Driver Suspensions	<b>4</b>	<b>5</b>	<b>5</b>
Revoked	<b>0</b>	<b>0</b>	<b>1</b>
<b>Total</b>	<b>100</b>	<b>41</b>	<b>95</b>

## **Partnership Working**

We work very closely with our partners and have built up excellent relationships. However, this last financial year has proven rather complicated with many agencies going through redundancies, restructure and change of personnel. The Olympics Games also impacted on resources, so for 3 months we could not run partnership operations. It is particularly demanding to keep up the level of partnership working and we try to hold a meeting at least quarterly to

keep everyone up to date on what everyone is doing and wherever there is an opportunity to work together.

There are a number of groups that meet to promote and discuss operations, problem areas, partnership working and how to utilise our resources. The Licensing Enforcement Team sits on partnership groups some of these include:

- Safety Advisory Group (Make sure that large scale events go ahead safely)
- Kent and Medway Regulatory Steering Group (policy discussion, good practice, new initiatives and increase liaison across the county on all licensing issues)

## **Operations**

We support a number of operations during the year, which includes those organised by Police and other council departments. We are also actively creating our own operations and inviting other agencies to support us in our initiatives.

## **Priorities**

It is evident from our past operations and our routine compliance and enforcement that there are areas that we need to prioritise.

### **Licensed Premises**

In 2011/2012 we started to visit members clubs that hold a club premises certificate which were graded as low risk premises. However, we have found considerable breaches under the Licensing Act 2003 and Gambling Act 2005. We have therefore scheduled Operation Caveman to run a minimum of once a week with the intention to deal with these issues under compliance.

However, that is not always possible and during the last financial year we were getting ready to issue our first Section 90 Withdrawal of a Club Premises Certificate on two members clubs who realised that they could not comply with being a qualifying club or were not acting in good faith. Letters were sent advising them of the action we were proposing and they both decided to apply for premises licences and then surrendered their club premises certificates. However, this year we have one premises that we will be issuing a Section 90 Withdrawal of a Club Premises Certificate after months of investigation these premises continually breach both Licensing Act 2003 and Gambling Act 2005 legislation.

Illegal working in off licences, restaurants and takeaways is still a huge problem in Medway with the continued support of the UK Border Agency we are hoping to run Operation Unite in two ward areas in Medway over the next 6 months. This operation looks at licensing offences, illegal workers, food hygiene, health and safety, fire measures, the use of the site, waste agreements, food labelling, counterfeit goods, noise levels and intelligence gathering for drugs, drunks, under age sales of alcohol and anti-social behaviour.

### **Gambling**

Cracking down on illegal gambling is top of the Gambling Commission agenda following concerns raised by councils about illegal gaming machines and the requirement for more information and training to address the problem. More than 150 unlicensed and illegal gaming machines have been seized by agencies working with the Commission across England in the last year which is part of their press release in May 2013.

Supplying gaming machines or making them available to the public without the appropriate licence or permission is a criminal offence. By their very nature, illegal gaming machines are unlikely to comply with Gambling Act licensing objectives which are aimed at ensuring gambling is conducted fairly and openly, protecting children and vulnerable people from being harmed or exploited by gambling, and keeping crime out of gambling. We therefore feel that we must



continue with Operation Bragg targeting unlicensed gaming machines. To gather intelligence for this operation we aim to carry out gaming machine inspection during all pub and club visits and report to the Gambling Commission. In partnership with the Gambling Commission we tend to carry out joint visits to those premises with suspect machines or unlicensed operators.

### **Taxis**

Working in partnership with the MLTDA (Medway taxi association) we continue to regularly meet up and address the issues raised not only from the trade but the public concerns around both drivers and vehicles.

On 1 September 2012 we implemented a change to the fire extinguisher requirements in partnership with Kent Fire and Rescue, MLTDA, Direct Fire (on behalf of the trade) and Licensing Enforcement Team. The licensing manager approved the system in which we started to enforce at the end of last year. This continues to cause some concern as some drivers have ignored the letter and guidelines sent out in August 2012 advising them of the change. Every vehicle we inspect has their fire extinguisher checked to make sure they are compliant. Licensing Enforcement Officers will take the following action if required: -

- No Fire Extinguisher = Suspension of the Vehicle until such time as an appointment is made to re-present to an enforcement officer with the correct extinguisher and certificate/invoice. On an officer determining the extinguisher is compliant with this document the suspension will be lifted.
- Fire Extinguishers that are Out of Date or Service History Issues = Will be given 3 days to comply (excluding Sundays and Bank Holidays). Failure to make an appointment to re-present the vehicle to an enforcement officer within 3 days with the correct fire extinguisher / service history will result in the vehicle being Suspended. The vehicle will remain suspended until such time as an appointment is made to re-present to an enforcement officer with the correct Extinguisher / Service History. On an officer determining the extinguisher is compliant the suspension will be lifted.

The last year has raised the issue around officer concerns about driver's attitude towards enforcement officers carrying out their duties. It is with some regret that I must report that the main issue for officers is dealing with the tempers/behaviour of drivers when dealing with complaints or carrying out inspections. Screaming, swearing and acting in a threatening behaviour is becoming an increasing problem and has in fact resorted in one driver receiving a warning letter from our legal team and certain drivers requiring two enforcement officers to manage the situation. Due to the very nature of the work we carry out we have very detailed risk assessments for officers but it is felt that if we continue to get drivers acting this way it must resort to us questioning their suitability under fit and proper as to whether they should be a licensed driver and bring this before the committee.

### **Key Performance Indicator's (KPI's)**

Each year we are set key performance indicators to show performance carried out by the licensing enforcement team. This year we must report on the following:-

<b>Monthly</b>
<b>Number of Application Notice Checks</b>
<b>Number of Specification Checks</b>

<b>Quarterly</b>
<b>Taxi Compliance Inspection – Hackney Carriage Vehicles</b>

<b>Taxi Compliance Inspection – Private Hire Vehicles</b>
<b>Suspension of vehicles and drivers - TOTAL</b>
<b>Suspension of vehicles and drivers Lifted - TOTAL</b>
<b>Licensed Premises Compliance Visits - TOTAL</b>
<b>Gambling Compliance Visits - TOTAL</b>
<b>Number of Visits result in Enforcement Action - Total</b>
<b>Service Request relating to Complaints - Premises</b>
<b>Service Request relating to Complaints - Drivers</b>
<b>Service Request relating to Complaints - Vehicles</b>
<b>Service Request relating to Complaints - Street Trading</b>
<b>Service Request relating to Complaint - All other areas</b>

## **Conclusion**

The forthcoming year is going to be extremely challenging for the licensing team as a whole. The volume of applications is continually increasing for the licensing services team and the variety of compliance and enforcement action continues to keep the licensing enforcement team extremely busy.

The enforcement team have had some positive results over the last year and we strive to improve and adapt to the constant changes.

### **Legislation**

The government is making many changes to legislation which impacts on the way that enforcement carries out its inspections and advice we provide. So far this year we are dealing with the impact of the Live Music Act and the deregulation of certain types of regulated entertainment, which affects many licensed premises and makes many conditions unenforceable between 8am and 11pm. We have the new Scrap Metal Dealers Act 2013, which will impact on the enforcement team where previously this was the sole responsibility of the Police.

### **Meetings**

We have decided that we need to push forward our partnership working and it is our aim this year to hold meetings with all our relevant partners in connection with Licensed Premises, Taxis and Gambling to arrange operations over the forthcoming 6 months.

### **IT Changes**

This last year has involved moving all enforcement actions from other systems onto our new licensing system IDOX. This has involved setting up the system to hold history of compliance and enforcement actions carried out across the licensing function and also logging details regarding actions taken with unlicensed persons, premises and vehicles. The system is now also logging investigations around complaints. We are only aiming to put on the system 2012 complaints and future complaints. Previous years will be held up to 6 years in paper form in line with holding data under data protection legislation. Officers are still adapting to the new data entry and to be able to search for data. With any new system there are ongoing issues and we appreciate that wherever possible we try to provide data requested from us as long as it is not in breach of data protection legislation.

### **Street Trading**

The street trading system is currently split between the town centre managers who deal with providing permission for town centres and festivals and licensing deal with other areas in

Medway. Enforcement is carried out jointly by licensing enforcement and environmental enforcement. It is proposed that over the forthcoming year we will be looking at the legislation carefully and create a policy around street trading and produce a new system which will impact on existing and future traders. Conditions on street trading consents will be amended, as some of the current conditions are no longer enforceable. Last year we ran Operation Wimpy in partnership with Environmental Health Food and Safety Team to look at our current traders and the locations from which they operate. Any changes to this system will impact on our future compliance and enforcement activity.