

Medway Council
Meeting of Licensing and Safety Committee
Tuesday, 22 July 2014
6.00pm to 6.30pm

Record of the meeting

Subject to approval as an accurate record at the next meeting of this committee

Present: Councillors: Carr (Vice-Chairman), Mrs Diane Chambers (Chairman), Etheridge, Paul Godwin, Griffin, Adrian Gulvin, Harriott, Iles, Kearney, Rodberg and Shaw

In Attendance: Elizabeth Benjamin, Senior Lawyer - Litigation
Lynsey Keen, Senior Licensing and Enforcement Officer
Alison Poulson, Licensing and Local Land Charges Manager
Lauren Wallis, Democratic Services Officer

171 Record of meeting

The record of the meeting of the Committee held on 28 November 2013 and the record of the Joint Meeting of all Committees held on 14 May 2014 were agreed and signed by the Chairman as correct.

172 Apologies for absence

There were no apologies for absence received. However, Councillor Baker did not attend the meeting.

173 Urgent matters by reason of special circumstances

There were none.

174 Declarations of disclosable pecuniary interests and other interests

Disclosable pecuniary interests

There were none.

Other interests

Councillor Gulvin declared an interest in item 5 – Kent and Medway Compliance and Enforcement Protocol in that it referred to the Kent Fire and Rescue Service and he was a member of that organisation. Councillor Godwin stated he was also a member of the organisation but had been advised that it was not a disclosable pecuniary interest.

175 Licensing Act 2003: Kent & Medway Compliance and Enforcement Protocol

Discussion:

The Licensing and Local Land Charges Manager advised that the reason for the report to come to Committee was that certain elements of the Protocol were not covered by the Council's Licensing Team for example, items covered by trading standards. The Protocol enhanced and encouraged partnership working, joint understanding and the co-operation of shared objectives. There would be regular consultation to keep the information up to date.

Protocols had been established with organisations the Council worked in partnership with on licensing compliance and enforcement issues. The Kent & Medway Regulatory Licensing Steering Group, of which Medway Licensing was a member, had formalised these protocols including liaison agreements and effective practice by way of an agreement between all relevant parties.

In adopting this document the parties agree to:

- Continue to promote the spirit of co-operation that exists between the relevant agencies;
- Recognise the benefits to be derived from developing close working relationships;
- Seek to enhance the understanding of the advantages and opportunities which joint activity can bring to effective enforcement and community safety;
- Promote the legitimate exchange of information and operational co-operation in support of shared objectives.

Each party to the protocol undertakes:

- To regularly consult with each other upon matters of policy and strategy;
- To ensure that the information it holds is accurate and up to date;
- That information disclosed by any party will be kept secure by the partner to whom it has been provided.

When handling the media, all parties to this protocol agree:

- To be fair to other organisations and maintain their integrity;
- When providing information to do so honestly and fairly;

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- Statements must reflect the multi-agency decision process or, clearly identify the statement as the independent position of an individual organisation;
- Consent of the data owner will be sought prior to releases of information to all third parties.

In response to a question about the “Golden Rules” (page 32) and the application of the Data Protection Rules, the Senior Licensing and Enforcement Officer advised that personal information such as a home addresses, contact telephone numbers and dates of birth were all protected under the Data Protection Act. However, if the Council was liaising with the Police, for example, about an individual, personal information could be shared for a specific and valid reason and an audit trail must be created. The Council could not share personal information with local residents.

A further question was raised about, for instance, a Designated Premises Supervisor or a licensee transferring from another county into Kent. The Senior Licensing and Enforcement Officer advised there was no central database holding personal information such as this and the only central agency was the Audit Commission. If Medway Council had an issue with such an individual, the Council could apply to the issuing authority for information. The Council could also ask the individual to verify their identity if necessary.

The Committee noted that the year after the Crime and Disorder Act entry on page 25 of the report should read 1998.

Decision:

The Committee adopts the Kent and Medway Licensing Compliance and Enforcement Protocol for use by the Medway Licensing Team in respect of only the relevant legislation and licenses covered at any time by this section of the Council – the Licensing Team.

176 Licensing Act 2003: Mandatory Conditions

Discussion:

The Committee was updated on the current list of Mandatory Conditions under the Licensing Act 2003. The Licensing and Local Land Charges Manager advised that the Government had published revised Mandatory Licence Conditions at the end of June, which the Order indicated would come into force on the 1st October 2014 and the amendment would deal with changes to irresponsible drinks promotions. The Mandatory Condition preventing alcohol being dispensed directly into another person's mouth had been incorporated into the definition of an irresponsible promotion.

The main change however, was that the previous qualification that any drinks promotion was only irresponsible if it was carried on in a manner which 'carried a significant risk' of undermining one of the licensing objectives had disappeared.

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The Order then went on to split definitions of irresponsible drinks promotions into five categories, some of which were not qualified by the requirement that it carried such a significant risk. Three categories would be illegal under any circumstances: dispensing alcohol directly into a person's mouth; a game or activity which encouraged people to drink a quantity of alcohol within a certain time limit (other than drinking up time), or to drink as much alcohol as possible; and selling alcohol in association with any posters / flyers in the vicinity of the premises, which could reasonably be considered to condone, encourage or glamorise anti-social behaviour, or the effects of drunkenness, in a favourable manner.

However, two other forms of promotions - unlimited or unspecified quantities of alcohol being sold free or for a fixed or discounted fee, and the provision of free or discounted alcohol as a prize, to encourage or reward purchase or consumption of alcohol over a period of 24 hours or less, were only irresponsible if they were carried on in a manner where there was a significant risk of undermining one or more of the licensing objectives.

Therefore, drinks promotions which were commonly run across the country which discount alcohol on a certain evening of the week, were only deemed to be irresponsible in the event that they were carried out in a manner which carried with it a significant risk to the licensing objectives. The draft order was significantly different to the situation in Scotland, where all specified drinks promotions were banned outright. Only those games or activities requiring individuals to drink alcohol quickly, or selling alcohol in association with posters or flyers glamorising drunkenness or anti-social behaviour, would be banned completely.

The Chairman requested that information in relation to Mandatory Conditions be circulated to the Committee by email as and when any changes occur and that the changes then be reported to the Committee for information.

The Licensing and Local Land Charges Manager stated it had previously been the focus of the licensing authority to advise licensees of any changes to their mandatory conditions and when it happened. However, the Government now recognised the burden this put on licensing authorities and had advised that the Council just had to ensure licensees were made aware of changes to Mandatory Conditions. The Council's legal team had been requested to provide advice on the best method including improved use of the Council website. Should the request to use of the website as the main source of information be considered legally sound, then it was intended to have a webpage containing this information placed in a dominant position on the Council's website. In addition, licensees would receive appropriate information contained in letters and flyers. The only time an actual licence would be amended would be when a variation for an existing licence was applied for.

Following a concern about a licensee being criticised for not displaying all the mandatory conditions along with a summary of the licence, the Licensing and Local Land Charges Manager advised that the Government did not expect for mandatory conditions to be displayed. However, this was one of the reasons that a legal viewpoint was being sought.

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Contacting licensees by text and email was discussed as concern was raised about the possibility of some licensees not being confident Internet users. The Senior Licensing and Enforcement Officer stated that all relevant information had been included on the website and all visit sheets had been changed to reflect the new information.

In relation to applications being available to view on the Council's website, the Licensing and Local Land Charges Manager described to the Committee what the administrative process involved in achieving this concluding with the need for an additional member of staff to undertake the work. In addition, the Licensing Team received very few requests to view applications which did not transfer to a need to have them available for viewing on the website.

The Licensing and Local Land Charges Manager confirmed that all licensees would receive a letter advising of where to find information on the changes to mandatory conditions, the relevant weblink and a reminder to check this weblink regularly for updates. In addition the licensing visiting officers would be briefed to pass on this information to licensees on their visits.

The Senior Licensing and Enforcement Officer stated that the licensees most affected by the changes in Mandatory Conditions would be targeted. The Council would be assisting licensees in the calculation of permitted pricing which was the most confusing Mandatory Condition. There would also be more changes to come from the Government that would include the deregulation of certain types of licensed premises and licensable activities, which would also produce a reduction in demand for temporary event notices.

Decision:

- (a) That the Committee note the update in legislation as detailed in the report.
- (b) That all licensees to be adequately informed of the changes to the Mandatory Conditions, and of the legislative sources, with records of so doing being held by the Licensing Authority.

Chairman

Date:

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