

LICENSING AND SAFETY COMMITTEE

20 JULY 2011

LICENSING ACT 2003

ENFORCEMENT REPORT ON LICENSING MATTERS

Report from: Deborah Upton, Assistant Director (Housing and Corporate Services)

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Summary

The purpose of this report is to present the local authority enforcement report on licensing matters to the Licensing and Safety Committee for Members' questions and comments.

1. Budget and Policy Framework

1.1 The Council's Statement of Licensing Policy in respect of its functions under the Licensing Act 2003 refers to the licensing objective of the prevention of crime and disorder and associated enforcement.

2. Background

2.1 The Council's Licensing Team works closely in partnership with other agencies and sections of the council to deliver the statutory requirements of the Licensing Act 2003 and other licensing legislation.

2.2 The Council has established protocols with these agencies on licensing enforcement issues. These 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. All licence holders are expected to co-operate in order to promote the licensing objectives. Evidence of non-co-operation may be considered sufficient grounds for review, suspension or revocation of any licence by the relevant agency, local authority officer.

2.3 A copy of the report is attached at Appendix A for Members' consideration.

3. Risk Management

- 3.1 It is important that the Licensing and Safety Committee is kept fully informed of issues in respect of licensing matters.

4. Financial and legal implications

- 4.1 There are no direct financial implications arising from this report
- 4.2 The Council has produced its Statement of Licensing Policy as required by the Licensing Act 2003.

5. Recommendations

- 5.1 That the report at Appendix A is considered by the committee and Members are invited to comment where appropriate.

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Background papers

1. Medway Council Statement of Licensing Policy
2. Licensing Report (see Appendix A to report)



**Licensing Enforcement Report
April 2010 to March 2011**

Introduction

The licensing enforcement team consists of:

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

Enforcement of licensing falls into two areas:

1. **Re-active Enforcement** – 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.
2. **Pro-active Enforcement** – 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.

The main areas we cover are:

- Persons/Premises that hold licensable activities 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, the provision of late night refreshment. Types of licences/applications include premises licences, club premises certificates, temporary event notices and personal licences.
- 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.
- Persons/Premises licensed to offer gaming machines or certain types of gambling. The relevant types of premises licensed are bingo halls, adult gaming centres, family entertainment centres, betting and (if any were to be introduced in Medway) racetrack or casino. 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, pubs and clubs carrying out lotteries either small society lotteries, incidental non-commercial lotteries, private lotteries and customer lotteries.
- Premises licensed as Sex Establishments which includes Sex Shops, Sex Cinemas or Sex Entertainment Venues.

Overview

Licensing Act 2003

Licensed Premises

Medway has 4 large nightclubs in its area (each with over 1000 occupancy) and numerous other venues that operate after 23:00. These premises form part of the night-time economy. With the demand for food related establishments after the pubs and nightclubs close, there has been an increase in the number of premises that are providing activities later than their licence permits and premises operating completely unlicensed.

In the current economic climate we have seen a number of pubs closing or being converted to takeaways/restaurants. There is a risk that licence holders will cut corners in levels of staff employed at peak periods including security staff, putting profits over compliance with legislation and employing expendable managers in licensed premises.

We have also seen a rise in premises licence holders going into administration or bankruptcy which results in the premises licence lapsing. Some premises can reinstate the licence with a transfer in a specified timescale or, if this is not available, they are required to re-apply for a licence.

We have had a lot of licensed premises closing down over the last year. Sometimes we are made aware of this and the licence is surrendered. 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.

The constant high turnover of designated premises supervisors at our more high-risk establishments makes it difficult to keep track of the owners and responsible persons without carrying out constant licensing checks to ensure that we maintain good working practices. Where possible we try to liaise with breweries and companies to get a permanent manager into premises to deal with problems.

Due to the volume of licensed premises in Medway it is difficult with existing resources to implement a system where each premises get regular enforcement visits. It is apparent that certain premises repeatedly come to our attention. Therefore, we do 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 this through a multi-agency enforcement approach. This system is proving successful and contributes to the results provided in this report.

Members' Clubs

Since both the Licensing Act 2003 and Gambling Act 2005 came into force these types of premises have had little proactive attention other than a mail shot with updates in legislation. In 2009/10 a dip test on clubs took place where officers contacted the clubs anonymously to arrange to book their function room for a party and it was found that there was a high level of non-conformance with licensing legislation. This was an intelligence gathering exercise and no enforcement action was taken at the time. Private members clubs were risk rated low risk in 2005 and therefore received a light touch enforcement approach.

Recent visits have highlighted numerous issues of non-compliance with a variety of legislation. The most serious concerns which have come to light since we started our visits involve committee members are in theft of membership funds that have resulted in the crime being reported to police. We have also found clubs not operating as qualifying clubs, which could result in us withdrawing the club premises certificate.

The other areas of concern are:

- Secretaries of clubs are not fully aware of their legal responsibilities and this has resulted in some stepping down.
- Non-compliance with the club rules or club rules being non-compliant with legislation. For example one set of rules did not allow anyone in a wheelchair to enter the premises.
- Structural alterations having taken place that affect fire safety measures.
- Allowing the supply of alcohol to members to take outside in gardens when not licensed for outside areas. Only sealed containers can be allowed if 'Supply of Alcohol' is licensed for off the premises.
- Illegal lotteries and not keeping records for types of gambling activity.
- Poor control measures in relation to handling cash on the premises.

Gambling Act 2003

Gambling at Pubs and Clubs

The most common gambling offences are not having the correct permits for gaming machines, holding illegal lotteries, no controls on games (bingo, poker, card games), not having correct financial controls on logging gambling activities within accounts of clubs or having records for pubs.

Illegal Gambling

It has come to our attention that we have private clubs being set up that move around an area and provide illegal gambling activity. These types of clubs can often be connected with terrorism and other criminal activity. We are currently working in partnership with Gambling Commission, Police, Environmental Health and Planning to deal with breaches of legislation.

Illegal Gaming Machines

As a result of our visits we have passed on intelligence to the Gambling Commission, who have dealt with offences of gaming machine operators providing illegal machines to premises in Medway.

Town Police Clauses Act 1847 and Local Government (Miscellaneous Provisions) Act 1976

Medway has the biggest taxi fleet of any authority within in Kent and Medway. . We have 490 hackney carriage drivers and 514 hackney carriage vehicles, 208 private hire drivers, 80 further drivers licensed for school runs only and 199 private hire vehicles.

Licensing enforcement officers do not have any powers to stop a moving vehicle. Therefore it makes sense to target areas where the drivers have no choice but to pick up and drop off.

The most common issues

- not having a fire extinguisher in the vehicle
- not displaying door signs
- not displaying the plates correctly
- failing to notify us of accidents or damage to vehicles

Private Hire

Over the last year more rigorous enforcement action has been undertaken in relation to private hire vehicles which are transporting vulnerable people to schools in Medway. As a result we have been finding that some drivers are not licensed to drive the type of vehicle they are using. It is planned to expand on this enforcement activity over the next year with support from school head teachers who have welcomed our attendance at the schools.

Hackney Carriage

The council licensing team monitors existing vehicles and drivers closely by regular contact with the trade and inspections of vehicles. Taxi ranks are visited to inspect hackney carriage vehicles on a regular basis by licensing enforcement officers.

Drivers

We have dealt with

- drivers refusing to take fares
- abusive behaviour towards the public, other drivers and officers
- erratic driving

Enforcement Administration

Whenever we make a visit in relation to licensing and gaming issues we complete an officer report. This is sent to either secretary, premises licence holder and designated premises supervisor to inform them of the outcome of our visit and the measures they need to take to rectify any issues within a set timescale.

This has proven to be extremely productive as it shows a consistent approach to enforcement and enables the licence holders to sort matters before we re-visit. This was implemented because we found that staff did not notify the licence holders of our visits and/or the relevant persons forgot what was mentioned during our visit. It also gives us the opportunity to explain in more detail about legislative requirements and provide details of websites or contacts to get further information. Some of the reports to members clubs have been 8 pages long. Having a written report of all issues enables us to complete quick follow up visits to make sure they are complying and if there is non compliance then we can step up the enforcement action taken.

Taxi inspections we have a carbon style sheet that we ask the driver to sign and a copy is then given to them at the time of the inspection.

We keep detailed audit trails so that these can be used for any enforcement action, reviews or prosecutions.

Re-active Enforcement Activity

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

144 Complaints were received from the public and investigated by licensing enforcement team.

- 75 Taxis complaints
- 59 Licensed Premises complaints
- 5 Street Trading
- 3 Gambling
- 2 Scrap Metal

We used to receive a number of anonymous phone calls regarding persons/premises breaking legislation many of which could have been determined as malicious. We now strongly advise members of the public to make formal complaints in writing. Asking a person to make a formal complaint has whittled out a number of malicious allegations. Where possible witness statements are then taken from those who are serious in taking the matter further.

Written complaints are logged and copies of correspondence are sent to other enforcement agencies where the complaint relates to a matter that is not strictly a licensing matter so that they can investigate any concerns raised. Acting on the complaint and following up with the complainant after our investigation with phone calls and written correspondence has enabled us to deal with a lot of people concerns. In some circumstances, a solution is reached in others we have seen an improvement and a reduction in receiving further complaints.

Pro-Active Enforcement Activity

Licensing

450 Visits to Licensed Premises

- 234 joint visits with Police (73 with Police Licensing Officer and 161 with Police Officers / Special Constables)
- 179 joint visits with UK Border Agency
- 147 joint visits with Environmental Health

25 Visits to unlicensed premises

84 Visits to Licensed Premises to check notices for applications are correctly displayed.

43 Verbal Warnings issued

55 Written Warnings issued

2 Voluntary Closures

Taxis

374 Taxi Inspections (this includes operations and partnership working)

- 307 Hackney Inspections
- 67 Private Hire Inspections

2 Formal Cautions

39 Vehicle Suspensions

41 Verbal Warnings

14 Written Warnings

Partnership Working

We work very closely with our partners and have built up excellent relationships. These are difficult times as many agencies are going through redundancies, restructure and change of personnel. This is making things difficult to keep the level of partnership working as we all have limited resources available.

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

- Performance Delivery Group (Community Safety Partnership)
- Violent Crime Forum (reducing crime in licensed premises)
- 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)
- Medway Alcohol Strategy Working Group

We work with the following agencies/departments on a regular basis:

- Police
- Fire
- Environmental Health
- Trading Standards
- School Transport
- UK Border Agency

- Gambling Commission
- VOSA (Vehicle And Operators Safety Agency)
- HM Revenue and Customs

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.

The most prominent operations are:

Police Operations

Operation Albatross

Intention of operation is to provide reassurance to those socialising across the Medway Towns during the evening and night-time economy. Prevent incidence of violence and disorder through high profile patrolling, targeted licensed premises visits and joint working with licensees. Identify and arrest persons involved in the supply and recreational use of drugs in and around licensed premises. We support this operation by completing routine licensing inspections and share intelligence on premises where we may think there are drug problems.

Operation Earthquake

This operation is run by officers from Medway Special Constabulary and is aimed at detecting driver documentation offences, disrupting criminal use of vehicles, accident reduction, tackling drink driving, and driver education thereby contributing to the Area Performance Strategy and Local Medway Road Safety Partnership. It is hoped that the presence of police officers on the road check will also provide reassurance to members of the public who lawfully use the road network. We support this operation by completing taxi inspections. In addition there are officers from VOSA (Vehicle And Operators Safety Agency) present.

Licensing Operations

Op Trinians

The aim of this operation is to inspect licensed vehicles and drivers on school runs for their compliance with licensing and school transport legislation. This increases reassurance for parents and teachers at the schools.

The licensing unit can only inspect licensed vehicles with 8 passenger seats or less or vehicles operating for hire and reward that are not licensed. The transport inspector is authorised to engage with all school run vehicles as well as PSV's. The transport inspector checks that all children being transported to and from the schools are listed on the school transport contract and on the correct run.

Op Hansom

The aim of this operation was to gather intelligence and to deal with the trade concerns about "out-of-towners" (taxis licensed by other areas) taking business away from our drivers and illegal operators plying for trade in Medway without an operator licence by advertising on websites. We also utilised this operation to deal with existing drivers who rank up illegally around Medway and those driving vehicles other than those they are licensed to drive.

Op Caveman

The aim of this operation is to educate and advise about the Licensing Act and Gambling Act requirements. Detailed visits are made with the Secretary, Committee and Steward to put them in a position to make amendments to their club premises certificates, club rules and procedures so as to comply with legislation prior to taking enforcement action.

Op Unite

The aim of this operation is to visit licensed premises that do not have regular visits. We complete a multi-agency visit to limit disruption to their business. We target a ward area so that all businesses are aware that we visited everyone and not just them. Each visit we look for 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 and anti-social behaviour. Press releases have been sent to the media, as this is a very high profile operation with very successful results for all agencies.

Op Night Owl

The aim of this operation is to visit licensed premises that do not open until after 5pm. We invite partnership agencies when required. However, we keep the numbers of officers down to 4 or less to enable us to move around quickly without disrupting the business. This gives us the opportunity to view what is going on without the public being made aware that we are there in an official capacity.

Future Operation

Op Bragg

The aim of this operation is preventing gambling from being a source of crime or disorder, ensuring that gambling is conducted in a fair and open way and protecting children and other vulnerable persons from being harmed or exploited by gambling. Working in partnership with the Gambling Commission we are looking for illegal gaming machines or illegal gaming in premises.

Conclusion

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

We have set quarterly targets for the new financial year:

- 55 pro-active licensed premises visits that are completed as part of partnership working.
- 60 pro-active taxi inspections of Hackney Carriage Vehicles, which is completed at ranks or operations
- 30 pro-active taxi inspections of Private Hire Vehicles, which is completed at supermarkets, schools or operations.
- 15 pro-active inspections of premises providing gaming machines and that they have the correct permits in place
- 5 different types of partnership operations dealing with enforcement across the licensing function attended
- 5 inspections at events with a temporary event notice